

## Deposition of Kirk Houtchens - Taken July 26, 2007

<p style="text-align: right;">Page 82</p> <p>1 Do you grow that's one of the recommendations?</p> <p>2 A. Yes.</p> <p>3 Q. How would it help eastern Oklahoma Scenic River</p> <p>4 Watersheds for 200,000 tons -- excuse me -- of litter to</p> <p>5 be transported to areas outside those watersheds?</p> <p>6 MR. McDANIEL: Object to the form.</p> <p>7 A. Well, I -- I would assume or --</p> <p>8 MR. McDANIEL: Don't -- don't speculate.</p> <p>9 THE WITNESS: Okay.</p> <p>10 MR. McDANIEL: Answer what you know.</p> <p>11 THE WITNESS: Okay.</p> <p>12 A. Just reading this third bullet point, reducing</p> <p>13 amounts, would be by just not putting it in the watershed.</p> <p>14 Q. (Mr. Riggs continued.) So how would that help the</p> <p>15 watersheds by removing this litter?</p> <p>16 MR. McDANIEL: Object to the form.</p> <p>17 A. I'm not sure. Like I said, I don't want to answer</p> <p>18 anything by just assumption. I don't know what -- what</p> <p>19 the authors meant by this.</p> <p>20 Q. (Mr. Riggs continued.) Does Peterson Farms, to your</p> <p>21 knowledge, stand behind the contents of this ad?</p> <p>22 A. There again, I wasn't prepared for this part, so I</p> <p>23 haven't read this ad, so I'm not --</p> <p>24 Q. Well, let's forget it's in an ad. Let's just say</p> <p>25 that Peterson Farms puts its name under a proposal to</p>	<p style="text-align: right;">Page 84</p> <p>1 MR. McDANIEL: And I told you Miss Wilkerson</p> <p>2 is prepared to talk about this ad.</p> <p>3 MR. RIGGS: Okay.</p> <p>4 Q. (Mr. Riggs continued.) Bullet point No. 4 says</p> <p>5 another part of the proposal to improve the management of</p> <p>6 poultry-related nutrients in the eastern Oklahoma Scenic</p> <p>7 River Watersheds would be to implement other alternatives</p> <p>8 for litter management such as turning it into fuel,</p> <p>9 composting it for export, and processing it into an</p> <p>10 organic fertilizer.</p> <p>11 How would that improve the watershed?</p> <p>12 MR. McDANIEL: Object to the form.</p> <p>13 A. Well, I think it just goes back to the third bullet</p> <p>14 point, we were just -- Peterson Farms is coming up or is</p> <p>15 endorsing ways to have less amount of poultry litter</p> <p>16 spread or land applied.</p> <p>17 Q. (Mr. Riggs continued.) Okay. So how would that</p> <p>18 help the scenic river watershed if less poultry litter</p> <p>19 were applied in it?</p> <p>20 MR. McDANIEL: Object to the form.</p> <p>21 A. Personally, I don't think it will help. It would --</p> <p>22 if litter's being applied by our contract growers by what</p> <p>23 the state law allows, whether it's Oklahoma or Arkansas,</p> <p>24 there shouldn't be any pollution.</p> <p>25 Q. (Mr. Riggs continued.) So are you in disagreement</p>
<p style="text-align: right;">Page 83</p> <p>1 remove 200,000 tons of poultry waste from a scenic river</p> <p>2 watershed as a way to improvement the management of</p> <p>3 poultry-related nutrients in the watershed. How would</p> <p>4 that improve that?</p> <p>5 MR. McDANIEL: I object to the form. It's</p> <p>6 been asked and answered.</p> <p>7 A. There again, I'm saying that I -- be it an ad or</p> <p>8 not, as far as me testifying or giving deposition, I'd be</p> <p>9 speculating on what the authors were trying to say that</p> <p>10 this was going to improve the watershed by removing the</p> <p>11 200,000 tons of litter.</p> <p>12 Q. (Mr. Riggs continued.) You don't have any idea how</p> <p>13 that could improve the watersheds?</p> <p>14 MR. McDANIEL: That's like three or four</p> <p>15 times you've asked it now.</p> <p>16 MR. RIGGS: First he said --</p> <p>17 MR. McDANIEL: He's answered the question.</p> <p>18 MR. RIGGS: First his reason was, "I didn't</p> <p>19 -- I didn't know anything about an ad," and I said, "Let's</p> <p>20 forget this is in an ad," just your basic question, which</p> <p>21 I'm trying to get an answer to.</p> <p>22 Q. (Mr. Riggs continued.) You're the person designated</p> <p>23 by Peterson to talk about these very things, if you'll</p> <p>24 look again at the list of things you were supposed to talk</p> <p>25 about today.</p>	<p style="text-align: right;">Page 85</p> <p>1 --</p> <p>2 A. See this --</p> <p>3 MR. McDANIEL: Just a minute. He wasn't</p> <p>4 finished go ahead.</p> <p>5 MR. RIGGS: I thought he said there wasn't</p> <p>6 any pollution.</p> <p>7 MR. McDANIEL: That's like saying he got it</p> <p>8 out of his mouth before you interrupted him, but he was</p> <p>9 still posing it.</p> <p>10 A. I said by properly land applying the litter, we</p> <p>11 believe that if our growers are following their nutrient</p> <p>12 management plans that were written by state agencies that</p> <p>13 are a lot more expert on these things, that this will not</p> <p>14 help reduce what is considered nutrient-lading or</p> <p>15 nutrient-loading.</p> <p>16 Q. (Mr. Riggs continued.) Okay. Are you in</p> <p>17 disagreement with Peterson Farms, the company, in your</p> <p>18 position that you just expressed?</p> <p>19 MR. McDANIEL: Object to the form. It's</p> <p>20 argumentative.</p> <p>21 A. Disagreeing with what?</p> <p>22 Q. (Mr. Riggs continued.) I believe you said I don't</p> <p>23 personally believe this, but you're here to testify for</p> <p>24 Peterson Farms, aren't you?</p> <p>25 MR. McDANIEL: No, sir. He said he didn't</p>

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1 agree with your statement.  
 2 Q. (Mr. Riggs continued.) Whichever way that went, are  
 3 you here to testify for Peterson Farms or for yourself?  
 4 A. For Peterson Farms.  
 5 MR. McDANIEL: Depends on whether you've  
 6 asked him --  
 7 MR. RIGGS: Okay.  
 8 MR. McDANIEL: -- you know, properly  
 9 designated him.  
 10 Q. (Mr. Riggs continued.) Do you know, then, on behalf  
 11 of Peterson Farms how alternative uses of litter  
 12 management rather than land applying it in the watershed  
 13 would help the watershed?  
 14 MR. McDANIEL: Asked and answered.  
 15 MR. RIGGS: I don't have an answer yet.  
 16 Q. (Mr. Riggs continued.) Do you know the answer to  
 17 that?  
 18 A. No, I don't.  
 19 Q. Do you know anybody in Peterson Farms that does know  
 20 the answer to that?  
 21 A. Well, I don't think we have anybody that is trained  
 22 or educated in these matters on the staff.  
 23 Q. Who -- who would want to put their name on an ad  
 24 that said that to a public newspaper recommending it to  
 25 the Attorney General?

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1 MR. McDANIEL: Object to the form.  
 2 A. No, I don't.  
 3 Q. (Mr. Riggs continued.) On bullet point No. 6, it  
 4 says, "Creating and funding a non-profit organization to  
 5 acquire and maintain conservation easements and buffers  
 6 along streams and rivers to protect against nutrient  
 7 run-off and erosion." That's one of the recommendations  
 8 to improve the watershed.  
 9 First of all, what does the statement mean by the  
 10 words "nutrient run-off"?  
 11 MR. McDANIEL: Object to the form.  
 12 A. I believe in this -- in this sentence what they're  
 13 calling nutrient run-off is in a large erosion or a rain  
 14 event that there's any nutrients on the land it would run  
 15 -- erode into a run-off into the water, surface water.  
 16 Q. (Mr. Riggs continued.) Okay. Now, would that be  
 17 true for Peterson litter or just these other companies'  
 18 litter fed into scenic river watersheds?  
 19 MR. McDANIEL: Object to the form.  
 20 A. Well, con -- conservation easements and buffers,  
 21 they would protect against any kind of run-off, whether  
 22 it's development from contractors, from cattle, horses.  
 23 Q. (Mr. Riggs continued.) Or -- or --  
 24 A. I mean, any kind of run off.  
 25 Q. Or spreading of poultry litter expulsion. Right?

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1 A. I would agree with that.  
 2 Q. Would it protect against poultry litter that comes  
 3 from Peterson's chickens in that watershed as well as any  
 4 other companies'?  
 5 MR. McDANIEL: Object to the form.  
 6 A. I think it would -- it would protect from any type  
 7 of run-off. And I guess that you -- I would have to agree  
 8 that it would be on Peterson's land.  
 9 Q. Okay.  
 10 A. Or the grower's land.  
 11 Q. You mentioned a few already, but I was going to ask  
 12 you, what are the sources, the various sources of .  
 13 nutrients that these buffer zones would be designed to  
 14 protect against?  
 15 A. What specific nutrients are you referring to?  
 16 Q. Well, I don't know. It's in the ad. It says  
 17 nutrient run-off. And I think you -- you mentioned a  
 18 variety of things. Just wanted to know if you wanted to  
 19 elaborate on any others that would be protected by these  
 20 buffer zones that are being recommended.  
 21 A. So you're asking me specifically other nutrients or  
 22 just these --  
 23 Q. Just want you to -- you named a few I don't  
 24 remember. I think you said cattle and something else. I  
 25 just wondered if you had any other sources in mind when

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1 you referred to nutrient run-off.  
 2 A. I -- I think I said what I --  
 3 Q. Okay.  
 4 A. -- is sufficient.  
 5 Q. Peterson Farms admits that poultry waste is a source  
 6 of those nutrients, according to the ad. Would you agree?  
 7 MR. McDANIEL: Object to the form. Source  
 8 of nutrients of what?  
 9 Q. (Mr. Riggs continued.) That the buffer zones are  
 10 designed to protect against.  
 11 MR. McDANIEL: Object to the form.  
 12 Q. (Mr. Riggs continued.) Let me direct your  
 13 attention, if it's okay, then, to that next to the last  
 14 paragraph of the ad which says, "We are prepared to do our  
 15 part to take care of the poultry portion of the nutrient  
 16 equation."  
 17 Doesn't Peterson Farms admit that poultry portion is  
 18 part of the problem?  
 19 MR. McDANIEL: Object to the form.  
 20 A. I -- I believe that we have admitted or, you know,  
 21 realized that there is a possibility that you could have  
 22 pollution from poultry litter.  
 23 Q. (Mr. Riggs continued.) Does Peterson have an  
 24 environmental division?  
 25 A. Currently?

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<p style="text-align: right;">Page 90</p> <p>1 Q. Yes, sir.</p> <p>2 A. I don't believe we do, but that's not really -- I'm</p> <p>3 not involved in that --</p> <p>4 Q. All right.</p> <p>5 A. -- part of the company.</p> <p>6 Q. All right. Has the company ever had an</p> <p>7 environmental division?</p> <p>8 MR. ELROD: I'm sorry, what's the last word,</p> <p>9 David?</p> <p>10 MR. RIGGS: Environmental division.</p> <p>11 MR. ELROD: Division. I'm sorry.</p> <p>12 A. There again, I'd really rather for that to be Mrs.</p> <p>13 Wilkerson.</p> <p>14 Q. (Mr. Riggs continued.) Okay. All right. Are there</p> <p>15 employees in Peterson, regardless of whether or not</p> <p>16 there's a specific division in the company devoted to this</p> <p>17 area, but are there employees in Peterson Farms, Inc., who</p> <p>18 have duties regarding environmental matters?</p> <p>19 A. I'm -- I believe we do, but that would be better to</p> <p>20 ask Mrs. Wilkerson. You know, we -- we have our -- our</p> <p>21 own facilities in Decatur, so I'm -- I'm sure we have</p> <p>22 environmental people there because we have, you know,</p> <p>23 regulations to uphold there. If that's what you're</p> <p>24 asking, if we have environmental people for our -- our</p> <p>25 company.</p>	<p style="text-align: right;">Page 92</p> <p>1 the environment?</p> <p>2 MR. McDANIEL: Object to the form.</p> <p>3 A. Well, there again, I -- I think that Peterson Farms,</p> <p>4 and I'm not going to speak for anyone else on this, but</p> <p>5 just from reading this, I believe this is, you know --</p> <p>6 part of it is publicity, and we do care about anybody's</p> <p>7 watershed, anybody's scenic rivers, whatever state they're</p> <p>8 in. We still believe that -- that the litter that the</p> <p>9 growers own is being applied properly through their</p> <p>10 nutrient management plans through state people that are a</p> <p>11 lot better trained at this and, you know, they're --</p> <p>12 they're educated in this. This is their specialty, this</p> <p>13 is their career. So I believe that's our stand, and</p> <p>14 that's -- that's why I answer that way.</p> <p>15 Q. (Mr. Riggs continued.) Do you know who Ron Mullikin</p> <p>16 is?</p> <p>17 A. Yes.</p> <p>18 Q. Who -- who is Ron Mullikin?</p> <p>19 A. I don't know him very well. He used to be an</p> <p>20 employee with Peterson Farms.</p> <p>21 Q. What period of time was it that he worked there?</p> <p>22 A. I'm not really sure. He -- I didn't work with him.</p> <p>23 Probably late '90s.</p> <p>24 Q. Was he someone who had environmental</p> <p>25 responsibilities for Peterson?</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Well, can you identify environmental concerns that</p> <p>2 Peterson Farms has?</p> <p>3 MR. McDANIEL: Object to the form.</p> <p>4 A. Peterson Farms, I believe we have to -- I mean, we</p> <p>5 have runoff issues we worry about with the feed mill or</p> <p>6 with the hatcheries or, you know, with the processing</p> <p>7 plant.</p> <p>8 Q. (Mr. Riggs continued.) What about in the poultry</p> <p>9 waste as used, when the Water Quality Handbook uses it,</p> <p>10 after its been land applied?</p> <p>11 MR. McDANIEL: Object to the form.</p> <p>12 Q. (Mr. Riggs continued.) Do you have an environmental</p> <p>13 concern about that as a company?</p> <p>14 A. We have a concern about it if it's mishandled.</p> <p>15 Q. Do you agree that poultry waste, as that term is</p> <p>16 used in the Water Quality Handbook you recommended to all</p> <p>17 your growers, produced by chickens owned by Peterson Farms</p> <p>18 in the Illinois River Watershed does adversely affect the</p> <p>19 quality of water in that watershed?</p> <p>20 MR. McDANIEL: Object to the form.</p> <p>21 A. I don't believe we feel like it adversely affects</p> <p>22 the quality of water if it's applied properly.</p> <p>23 Q. (Mr. Riggs continued.) Then why would you recommend</p> <p>24 hauling a lot of it out or creating buffer zones or using</p> <p>25 alternatives for it in an ad that's designed to protect</p>	<p style="text-align: right;">Page 93</p> <p>1 A. I -- the last I knew -- I just thought he worked in</p> <p>2 human resources as like a trainer or something.</p> <p>3 Q. Let me hand to you an exhibit. It's a two-page</p> <p>4 document. Number 9, I think it is. Take a minute to look</p> <p>5 (Wherein, Plaintiff's Exhibit 9 was marked.)</p> <p>6 A. I didn't read it all, but I looked at all of it --</p> <p>7 Q. Okay.</p> <p>8 A. -- if you're ready.</p> <p>9 Q. It says it's a memo, interoffice memo, to Dan</p> <p>10 Henderson. I believe you told he was the president of the</p> <p>11 company. Right?</p> <p>12 A. Yes.</p> <p>13 Q. At one time.</p> <p>14 A. Yes, sir.</p> <p>15 Q. And it's dated March 27th, 1998. Would that have</p> <p>16 been a time when Mr. Henderson was president?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. And it has copies to Vic Evans and Janet Wilkerson.</p> <p>19 Who is Vic Evans?</p> <p>20 A. At the time, Vic Evans was our CEO.</p> <p>21 Q. He's no longer your CEO?</p> <p>22 A. No, sir.</p> <p>23 Q. Do you know what Miss Wilkerson's job was at that</p> <p>24 time?</p> <p>25 A. I believe she was vice president of human resources.</p>

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<p style="text-align: right;">Page 94</p> <p>1 Q. Okay. Mr. Mullikin says in this letter to the 2 company president in 1998, "In the past few months I've 3 been exposed to a wealth of information and individuals in 4 the poultry industry. I would like to share with you some 5 of my views on where we are, and where we may be headed on 6 the poultry litter issue. 7 "I personally have no opinion about whether or not 8 the integrator or the grower owns the litter. I do feel 9 without any doubt that as time passes, we the integrator 10 will be found to liable for it and the affect it has on 11 our environment." 12 Do you know if, as a result of this written opinion 13 expressed to the president by Mr. Mullikin, whether or not 14 there was within the company around that time a discussion 15 about the contents of that statement? 16 A. No, I don't. 17 Q. Do you remember any discussions within the company 18 about who should take responsibility for the litter, and 19 to use Mr. Mullikin's words, the effect it has on the 20 environment? 21 MR. McDANIEL: Object to the form. 22 A. No, I don't. 23 Q. (Mr. Riggs continued.) Were you personally ever 24 involved in any discussions about who should take 25 responsibility for the poultry litter produced by the</p>	<p style="text-align: right;">Page 96</p> <p>1 address the environmental need to stop applying litter to 2 local pasture lands? 3 MR. McDANIEL: Object to the form. 4 A. Well, I don't know -- personally, I wasn't involved 5 of anything as a result of this memo. I just -- I know of 6 all the things that have been done since '97 to present. 7 Q. (Mr. Riggs continued.) To stop applying litter to 8 local pasture lands to address environmental needs? 9 MR. McDANIEL: Object to the form. 10 A. No, I don't. 11 Q. (Mr. Riggs continued.) You don't know of anything 12 the company's done in response to -- 13 A. In response to this memo? 14 Q. -- Mr. Mullikin's statement that the company'd be 15 best served to address the environmental need to stop 16 applying litter to local pasture land? 17 MR. McDANIEL: Object to the form. 18 A. No, not directly related to this memo, I don't. I 19 know of things we've done since -- 20 Q. (Mr. Riggs continued.) Okay. 21 A. -- '97, but I can't say it was because of this memo. 22 Q. Okay. 23 A. I just -- 24 Q. What -- what things have you done which would 25 address the environmental need to stop applying litter to</p>
<p style="text-align: right;">Page 95</p> <p>1 company's chickens? 2 A. No, I didn't. 3 Q. Do you know if any of the policies of the company 4 changed with respect to the question of who should take 5 responsibility for the litter produced by its chickens as 6 a result of this memorandum by Mr. Mulligin to president 7 Henderson? 8 A. No, I don't. 9 Q. Let me ask you to look at the last paragraph of the 10 Mullikin memorandum. It says, "Dan," meaning Dan 11 Henderson, "I feel the direction Peter Farm" -- "Peterson 12 Farms and all integrators would best be served to focus 13 its resources towards, would be alternative uses. Things 14 such as using litter as bedding, feed, fertilizer, and 15 fuel are just a few of the uses I've found some 16 information on. Each of these uses has its own set of 17 benefits and short-comings. But they all address the 18 environmental need to stop applying litter to our local 19 pasture lands." 20 Now, that memo was written over nine years ago, and 21 he said in the last words of the memo, I'm quoting, 22 "integrators would be best served to focus their resources 23 towards all" -- "addressing the environmental need to stop 24 applying litter to our local pasture lands." 25 What has Peterson Farms done since that time to</p>	<p style="text-align: right;">Page 97</p> <p>1 local pastures? 2 MR. McDANIEL: Object to the form. 3 A. There again, Peterson Farms requires that its 4 growers have nutrient management plans through their -- 5 the appropriate state agencies, and I know that is one 6 thing. Now, whether that allows them to apply litter on 7 -- on their land or not would also -- it just depends on 8 their plan, what their nutrient plan is and their soil 9 samples. 10 Q. (Mr. Riggs continued.) But this says not to apply 11 in any particular way but to stop applying it, doesn't it? 12 He says, "There's an environmental need to stop applying 13 litter to local pasture lands," doesn't he? 14 A. Looks like he says that the alternative methods 15 address the environment need to stop applying litter, but 16 this, basically, is leading on -- I don't -- just reading 17 it, I'm not trying to interpret what he was thinking when 18 he wrote it, but that's what it looks like to me. 19 Q. Let me hand you Exhibit 10, another memorandum from 20 Mr. Mullikin. 21 (Wherein, Plaintiff's Exhibit 10 was marked.) 22 This is about three months later, I guess. It's 23 July 24th, 1998. Sent to Dan Henderson, Gene Wilmoth, 24 Sean Holcombe, Rodney Dunnam, and Janet Wilkerson. Let me 25 first ask you who is Gene Wilmoth?</p>

25 (Pages 94 to 97)



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<p>1 A. Gene Wilmoth was our executive VP of production.</p> <p>2 Q. Is that the job you now have? Is that --</p> <p>3 A. I'm just like a production manager.</p> <p>4 Q. Okay.</p> <p>5 A. He's retired.</p> <p>6 Q. Okay. Sean Holcombe. Who is he?</p> <p>7 A. He was a former breeder/manager.</p> <p>8 Q. Rodney Dunnam?</p> <p>9 A. Rodney has had several capacities in the company,</p> <p>10 and at that time I'm not sure what his position was. It</p> <p>11 might have been buy -- grain buyer.</p> <p>12 Q. Okay. Was Dan Henderson still president in July of</p> <p>13 '98?</p> <p>14 A. Yes, sir.</p> <p>15 Q. This memo does deal specifically with the Spavinaw</p> <p>16 Eucha Watershed. Let me ask you, have you seen it before?</p> <p>17 A. No, I haven't.</p> <p>18 Q. Okay. In the middle paragraph Mr. Mullikin says,</p> <p>19 quote, We need to find and develop new plans for waste</p> <p>20 management that work for our growers. The meeting was</p> <p>21 helpful for only two growers, of which one was ours. Out</p> <p>22 of 37 fields, 31 had too high of a phosphorous level,</p> <p>23 which was anything above 300 pounds. This meant that</p> <p>24 those who were in that range couldn't fully develop their</p> <p>25 plan or put any more litter on their fields. Our growers</p>	<p>1 Q. (Mr. Riggs continued.) This was a survey testing 37</p> <p>2 fields in the Spavinaw Eucha Watershed, and 31 had too</p> <p>3 much phosphorus to accommodate any more litter. I'm</p> <p>4 asking if Peterson Farms has any evidence which would show</p> <p>5 or suggest that a survey of fields in the Illinois River</p> <p>6 Watershed would produce substantially different results.</p> <p>7 MR. McDANIEL: Object to the form.</p> <p>8 A. No, we don't have any evidence of that.</p> <p>9 Q. (Mr. Riggs continued.) Are the practices regarding</p> <p>10 how poultry litter is managed and utilized any different</p> <p>11 for Peterson Farms' growers in the Illinois River</p> <p>12 Watershed from the practices of its growers in the Eucha</p> <p>13 Spavinaw Watershed?</p> <p>14 MR. McDANIEL: Time frame? Can you specify</p> <p>15 a time frame?</p> <p>16 MR. RIGGS: Well, it says currently.</p> <p>17 MR. McDANIEL: Okay.</p> <p>18 A. Currently?</p> <p>19 Q. (Mr. Riggs continued.) Yeah.</p> <p>20 A. Yeah, the practices would be different because of</p> <p>21 the Tulsa settlement.</p> <p>22 Q. The use of poultry litter is more restrictive in the</p> <p>23 Eucha Water -- Spavinaw Watershed than the Illinois</p> <p>24 Watershed at present. Right?</p> <p>25 MR. McDANIEL: Object to the form.</p>
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<p>1 feel as though they have nowhere left to turn."</p> <p>2 Do you understand what Mr. Mullikin was referring to</p> <p>3 in those comments, this 31 out of 37 fields had too much</p> <p>4 phosphorous?</p> <p>5 MR. McDANIEL: Object to the form.</p> <p>6 A. I believe he's saying that 37 out of 31 were above</p> <p>7 300 pounds.</p> <p>8 Q. (Mr. Riggs continued.) Okay.</p> <p>9 A. But I'm not aware at this time, you know -- you</p> <p>10 know, what his -- what he was con -- you know, referring</p> <p>11 to as far as the --</p> <p>12 Q. He does say the phosphorous levels were too high to</p> <p>13 allow those fields to accommodate any more poultry litter,</p> <p>14 doesn't he?</p> <p>15 A. I believe that's what he's writing in this.</p> <p>16 Q. Says they couldn't fully develop their plan or put</p> <p>17 any more litter on their fields. Correct? Thirty-one out</p> <p>18 of 37. Is that your understanding of the memo?</p> <p>19 A. Yes.</p> <p>20 Q. Does Peterson Farms have any evidence which would</p> <p>21 show or even suggest that a survey of fields with the</p> <p>22 Illinois River Watershed would produce substantially</p> <p>23 different results?</p> <p>24 MR. McDANIEL: Object to the form.</p> <p>25 A. Different results from what?</p>	<p>1 A. It's probably not in Oklahoma.</p> <p>2 Q. (Mr. Riggs continued.) Well, how is it different</p> <p>3 then? You said it was different because of that</p> <p>4 settlement, so how is it different?</p> <p>5 A. Well, what's different is we use a nutrient</p> <p>6 management team from -- the -- a judge-appointed team, the</p> <p>7 Eucha Spavinaw Watershed. We don't use the NRCS. That's</p> <p>8 how it's different.</p> <p>9 Q. And does that result in more or less litter being</p> <p>10 applied in the Eucha Spavinaw Watershed for the available</p> <p>11 pasture land than the Illinois River Watershed?</p> <p>12 MR. McDANIEL: Object to the form.</p> <p>13 A. I believe that there may be a slight difference in</p> <p>14 the phosphorus indexes, but it's pretty tough in both</p> <p>15 Arkansas and Oklahoma, so --</p> <p>16 Q. Do you know --</p> <p>17 A. -- you know, everyone is -- whether it's in the</p> <p>18 Spavinaw Eucha or in the Illinois in Arkansas or the</p> <p>19 Illinois in Oklahoma, the -- the main difference is, is</p> <p>20 our growers in the Arkansas -- not in the Arkansas, but</p> <p>21 anywhere in the Spavinaw Eucha Watershed, they have people</p> <p>22 come directly from the Spavinaw Eucha nutrient management</p> <p>23 team.</p> <p>24 Q. So are you saying there's more oversight of those</p> <p>25 litter spreading practices in the Eucha Spavinaw Watershed</p>

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<p>1 than in the Illinois Watershed?</p> <p>2 A. No, I'm not saying there is at all.</p> <p>3 Q. Is there --</p> <p>4 A. Just different oversight.</p> <p>5 Q. Okay. What is the oversight in the Illinois River</p> <p>6 Watershed of that practice?</p> <p>7 A. That would be the state -- the -- the Oklahoma</p> <p>8 Department of Agriculture, the Oklahoma DEQ, the Oklahoma</p> <p>9 NRCS, the Arkansas DEQ, the Arkansas NRCS. You would have</p> <p>10 to talk to them.</p> <p>11 Q. So tell me again. I'm sorry. I'm just not</p> <p>12 understanding what you're saying the difference is between</p> <p>13 the two watersheds as a result of the settlement. What</p> <p>14 things are happening in the Eucha Spavinaw Watershed</p> <p>15 regarding the application -- land application of poultry</p> <p>16 litter that are -- are not happening in the Illinois River</p> <p>17 Watershed?</p> <p>18 MR. McDANIEL: Object to the form.</p> <p>19 A. The difference is, is that when a grower wants to</p> <p>20 spread his litter or he's considering spreading his litter</p> <p>21 in any of the watersheds, the difference is in our -- in</p> <p>22 the Spavinaw Eucha, a court-appointed or a group, someone</p> <p>23 else comes out and samples his soil versus someone from</p> <p>24 either the Department -- NRCS from Arkansas or Oklahoma.</p> <p>25 Q. (Mr. Riggs continues.) Well, that does not happen</p>	<p>1 their own samples.</p> <p>2 Q. But you know for sure they don't in the Eucha</p> <p>3 Spavinaw Watershed? It's done for them, I believe you're</p> <p>4 saying. Right?</p> <p>5 A. That's correct.</p> <p>6 Q. Prior to this City of Tulsa case settlement were</p> <p>7 there any differences that you know of between litter</p> <p>8 management practices, between the two watersheds?</p> <p>9 A. No.</p> <p>10 Q. This is before the City of Tulsa lawsuit, which you</p> <p>11 compared the practices in those two watersheds with regard</p> <p>12 to how the litter was managed for me?</p> <p>13 MR. McDANIEL: Object to the form.</p> <p>14 A. I don't think there would be any difference. Might</p> <p>15 have been some difference between Arkansas and Oklahoma</p> <p>16 but not based on their watershed, no.</p> <p>17 Q. Let me hand you Exhibit No. 11. This is another</p> <p>18 memo from Ron Mullikin and it does have on this one, I</p> <p>19 believe you agree, his title. It says, "Director of</p> <p>20 Personnel/Environmental Affairs/Corporate Training. Do</p> <p>21 you see that?</p> <p>22 (Wherein, Plaintiff's Exhibit 11 was marked.)</p> <p>23 A. Yes, I do.</p> <p>24 Q. So do you, based upon this, believe that he was --</p> <p>25 one of his job duties at least was environmental affairs?</p>
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<p>1 in the Illinois River Watershed, does it? The growing</p> <p>2 samples his own fields. Correct?</p> <p>3 A. No, that's not correct.</p> <p>4 Q. Who does the sampling in the Illinois River</p> <p>5 Watershed?</p> <p>6 A. An employee from the NRCS.</p> <p>7 Q. In every instance that's the case?</p> <p>8 A. I believe. I'm not -- you know, we don't sample</p> <p>9 their fields for them, we just expect them to, you know,</p> <p>10 comply by state and federal laws.</p> <p>11 Q. Do you know who actually pulls the samples that are</p> <p>12 sent to the lab to be analyzed?</p> <p>13 A. I don't.</p> <p>14 Q. Let's say the Illinois River Watershed currently.</p> <p>15 A. Arkansas? Oklahoma? You know, it's got to be very</p> <p>16 specific because they -- depending on what the state laws</p> <p>17 require they're recommended --</p> <p>18 Q. You're saying it's your opinion or belief that the</p> <p>19 state employees or agents of the state in both states</p> <p>20 actually pull the soil samples from the fields and not the</p> <p>21 grower himself?</p> <p>22 MR. McDANIEL: Object to the form.</p> <p>23 A. I don't know for sure, but, you know, I'm thinking</p> <p>24 that, you know, depending on whether you're in Oklahoma or</p> <p>25 Arkansas, I'm not sure they allow the growers to pull</p>	<p>1 A. Yes. Based on the way he's showing his title, I</p> <p>2 would have to agree with that.</p> <p>3 Q. Okay. This memo is dated November 24th, some three</p> <p>4 or four months after the second one. This is the third</p> <p>5 one. The first one was in March, and then July, and now</p> <p>6 in November, all of 1998. Do you agree?</p> <p>7 A. Yes.</p> <p>8 Q. This one goes -- did go to Vic Evans and Dan</p> <p>9 Henderson, Gene Wilmoth, and Janet Wilkerson. You've told</p> <p>10 me who those people are. Those are fairly high level</p> <p>11 executives within the Peterson company. Correct?</p> <p>12 A. Yes.</p> <p>13 Q. And this says, the very first sentence, "Time</p> <p>14 continues to pass with no new solutions for dealing with</p> <p>15 excess animal waste and environmental problems it is</p> <p>16 creating."</p> <p>17 Do you know when these memos were going to these</p> <p>18 higher executives in the Peterson company what kind of</p> <p>19 response Mr. Mullikin was getting from any of them?</p> <p>20 A. No, I don't.</p> <p>21 Q. Do you agree with Mr. Mullikin's statement in the</p> <p>22 very first sentence of this memo to the president and</p> <p>23 other high officers of the company that there is excess</p> <p>24 animal waste and it is creating environmental problems?</p> <p>25 MR. McDANIEL: Object to the form.</p>

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<p style="text-align: right;">Page 106</p> <p>1 A. No, I don't -- I don't know if I can agree with it  2 or not because this is just the memo that he wrote out to  3 send. I don't -- I haven't seen any scientific data or  4 any analysis to show that.  5 Q. (Mr. Riggs continued.) Did you know --  6 A. This was a --  7 Q. -- Mr. Mullikin? I'm sorry.  8 A. This is just his -- I believe his opinion.  9 Q. As the person in charge of environmental affairs  10 with the company?  11 A. I believe so.  12 Q. The last two sentences of this memo say, "The  13 solution may be one or a combination of these  14 technologies," referring to alternative uses, which is the  15 subject of the memo. Then he goes on to say, quote, Or it  16 may mean our industry must make some changes in the way we  17 do business."  18 Do you know what he meant by that?  19 A. No, I don't.  20 Q. Do you know if there was ever a discussion within  21 the company generated by these comments from Mr. Mullikin?  22 A. No, I don't.  23 Q. Since he made those remarks in writing to the higher  24 executives of Peterson some nine years ago, has the  25 industry changed the way it does business --</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Hand you Exhibit No. 12.  2 (Wherein, Plaintiff's Exhibit 12 was marked.)  3 This is a four-page exhibit dated March of 1988  4 entitled, Agricultural Land Use, Nutrients, and Water  5 Quality in Benton and Washington Counties, Martin Maner,  6 Arkansas Department of Pollution Control &amp; Ecology. Do  7 you know who Martin Maner is?  8 A. No, sir, I don't.  9 Q. Take a look at this four-page document and then  10 after you've had a chance to look at it, tell me if you  11 have ever seen it before.  12 A. No, I have never seen this before.  13 Q. Okay. According to the document itself, it is  14 dealing with water quality in two Northwest Arkansas  15 counties, Benton and Washington Counties. Do you agree  16 that a major part of the Illinois River Watershed is in  17 Benton and Washington Counties?  18 A. Yes, I agree.  19 Q. At the bottom of page 1 it says, according to the  20 1982 data, there are 641,100 acres of farmland in this two  21 county area. And then it says, "Thus, nitrogen and  22 phosphorus loading can be calculated as follows." And  23 then he sets forth these assumptions that underlie his  24 study. I'll give you a minute to look at those. The  25 assumptions deal with the amount of farmland available for</p>
<p style="text-align: right;">Page 107</p> <p>1 MR. McDANIEL: Object.  2 Q. (Mr. Riggs continued.) -- with regard to  3 environmental concerns?  4 MR. McDANIEL: Object to the form.  5 A. I don't know if we made any changes based on this  6 memo. Yeah, years have gone by that a lot of things have  7 changed. You know, we've learned a lot. Science has  8 changed, technology has changed, information has changed.  9 Q. So how have the practices within the company changed  10 with respect to this environmental concern expressed in  11 this memo?  12 A. Well, I'm not really sure what all was, you know,  13 involved with this memo. I wasn't there, so I don't know  14 the answer to that. I just know that we've changed ways  15 that we work with our broiler growers, breeder growers,  16 and -- and the way that they're handling their -- their  17 poultry litter and how they do their nutrient management  18 practices.  19 Q. Do you -- do you know under what circumstances Mr.  20 Mullikin left the employment of Peterson Farms?  21 A. All I had heard was he left to go to work for Sam's  22 Club. I -- I just -- you know, it's been years ago. I  23 didn't know him very well. I just remember hearing that  24 he'd left to go to Sam's Club. So I -- I don't know if he  25 even worked there before or not.</p>	<p style="text-align: right;">Page 109</p> <p>1 spreading litter and what's in the litter and that sort of  2 thing. Just take a look at those first.  3 (Witness looks at document.) Okay. Then it has a  4 calculation of the annual nitrogen  5 Load and the annual phosphorus load for the  6 available farmland in Benton and Washington Counties.  7 That means available for receiving poultry litter. And  8 I'm leading to this, those assumptions and calculations  9 are followed by the statement, "Nitrogen and phosphorus  10 should be applied at a rate not greater than what cover  11 plants can assimilate." Do you agree with that statement?  12 MR. McDANIEL: Which statement? Just that  13 one phrase?  14 MR. RIGGS: Nitrogen and phosphorus should  15 be applied at a rate not greater than what cover plants  16 can assimilate.  17 MR. McDANIEL: Object to the form.  18 A. I think that's -- that's proper management. I think  19 that's correct.  20 Q. (Mr. Riggs continued.) And then it says right after  21 that, "General guidelines for phosphorus are about 40  22 pounds per acre per year, and the current application rate  23 is probably in excess of 80 pounds per acre per year." It  24 then says, "These rates assume the material is spread  25 evenly over all the available area, which is unlikely.</p>

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1 Thus higher rates than these are probable." Were you  
 2 aware of that?  
 3 MR. McDANIEL: Object to the form. You  
 4 haven't designated or requested Peterson to provide a  
 5 witness to testify about technical articles that,  
 6 apparently, aren't even in their files, so we're not going  
 7 to answer that question.  
 8 MR. RIGGS: Well, this has to do with  
 9 knowledge and awareness of the company of these very  
 10 issues. And --  
 11 MR. McDANIEL: You pulled an excerpt out of  
 12 a technical report the man said he's never seen.  
 13 MR. RIGGS: It's in --  
 14 MR. McDANIEL: He's not going to interpret.  
 15 MR. RIGGS: It's the -- it's the complete  
 16 report, and I'm trying to find out if anybody in the  
 17 company knows anything about it. It's from the Arkansas  
 18 Department of Pollution Control and Ecology, so it's not  
 19 just some stray article, some -- someone wrote but didn't  
 20 have a basis.  
 21 MR. McDANIEL: David, there's no foundation  
 22 for anything you just said. The man hasn't seen it, he's  
 23 not -- he's not --  
 24 MR. RIGGS: I'm asking --  
 25 MR. McDANIEL: -- here to interpret articles

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1 --  
 2 MR. RIGGS: -- you to take your time and  
 3 read it.  
 4 MR. McDANIEL: Peterson Farms witness is not  
 5 going to answer these questions. It is an improper  
 6 examination. If you disagree with me, you can take it to  
 7 the judge.  
 8 MR. RIGGS: Yeah.  
 9 MR. McDANIEL: He's not going to answer the  
 10 question.  
 11 MR. RIGGS: Okay. Let me ask the witness.  
 12 Q. (Mr. Riggs continued.) Are you refusing to answer  
 13 not only that question but any other questions about the  
 14 Maner report made in 1988 regarding nitrogen and  
 15 phosphorus loading in these two counties?  
 16 A. Yes.  
 17 Q. You are speaking on behalf of the company when  
 18 you're saying you do not have knowledge of this article  
 19 I'm referring to by Martin Maner in 1988?  
 20 A. Yes.  
 21 Q. Not just you personally haven't seen it; to your  
 22 knowledge, nobody at Peterson has either?  
 23 A. To my knowledge, no one at Peterson has seen that.  
 24 THE VIDEOGRAPHER: Excuse me, Counsel. We  
 25 have about five -- five minutes.

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1 MR. RIGGS: Okay.  
 2 Q. (Mr. Riggs continued.) Do you know how much pasture  
 3 acreage is available in the Illinois River Watershed to  
 4 receive poultry waste?  
 5 MR. McDANIEL: Object to the form.  
 6 A. No, I don't, sir.  
 7 Q. (Mr. Riggs continued.) Has Peterson Farms ever  
 8 sought to find that out?  
 9 A. Not that I'm aware of, specifically, no.  
 10 Q. Do you know how much poultry waste in total is  
 11 currently -- say it's the last year, spread on land within  
 12 the Illinois River Watershed?  
 13 A. No, I do not.  
 14 Q. Do you know how much poultry litter from Peterson  
 15 Farms growers' houses was spread on -- in the Illinois  
 16 River Watershed in the last year?  
 17 A. No, I do not.  
 18 Q. Is that something Peterson Farms has any interest  
 19 in?  
 20 MR. McDANIEL: Object to the form.  
 21 A. Yes. We're interested in any failure to -- to  
 22 follow nutrient management plans, anybody that is  
 23 violating the plans.  
 24 Q. (Mr. Riggs continued.) Do you know what the  
 25 Arkansas Poultry Federation is?

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1 A. Yes, I do.  
 2 Q. What is it?  
 3 A. It is a federation of Arkansas, Missouri, and  
 4 Oklahoma poultry producers and poultry integrators.  
 5 Q. So even though it's called Arkansas Poultry  
 6 Federation, it still has members from other states?  
 7 A. That's correct.  
 8 MR. ELROD: It's not -- no longer Arkansas.  
 9 MR. RIGGS: Oh, it's not anymore? Just the  
 10 Poultry Federation now?  
 11 MR. McDANIEL: Yeah.  
 12 MR. RIGGS: Okay.  
 13 THE WITNESS: True.  
 14 Q. (Mr. Riggs continued.) Okay. Does Peterson Farms  
 15 or its employees participate in the activities of the  
 16 Poultry Federation?  
 17 MR. McDANIEL: Miss Wilkerson's designated  
 18 for that. She can answer that for you.  
 19 MR. RIGGS: Okay.  
 20 MR. McDANIEL: Of course, I reserve the  
 21 right that she may say, "I don't know," and she won't  
 22 answer it.  
 23 MR. RIGGS: She'll say, "You should have  
 24 asked Mr. --"  
 25 MR. McDANIEL: No, she won't do that.



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<p>1 MR. RIGGS: Okay.</p> <p>2 MR. McDANIEL: She is the designee for that</p> <p>3 topic.</p> <p>4 MR. GARREN: Two minutes left on this tape.</p> <p>5 MR. RIGGS: Okay. I think this is a good</p> <p>6 time to break then. We've got -- I think we should change</p> <p>7 the tape. I'm going to move into another area.</p> <p>8 THE VIDEOGRAPHER: The time is 3:33. This</p> <p>9 is the end of tape 3. We're off the record.</p> <p>10 (Wherein, a break was taken from 3:33 to 3:45.)</p> <p>11 THE VIDEOGRAPHER: The time is 3:45. This</p> <p>12 is the beginning of tape 4. We're on the record.</p> <p>13 MR. McDANIEL: David, when we were on the</p> <p>14 break I was talking to some of the other counsel and what</p> <p>15 you marked as Exhibit 12 is Arkansas Department of</p> <p>16 Pollution Control and Ecology report. None of the</p> <p>17 attorneys, including myself, have ever seen this before.</p> <p>18 Has the State of Oklahoma produced this document in</p> <p>19 discovery in this case?</p> <p>20 MR. RIGGS: I do not know the answer to that</p> <p>21 personally. We can find out.</p> <p>22 MR. GARREN: I don't know. Probably not if</p> <p>23 you've not seen it.</p> <p>24 MR. McDANIEL: Okay. Well, then I want to</p> <p>25 raise an objection to putting documents in front of a</p>	<p>1 A. We are a part of the industry. I don't know if</p> <p>2 we're a major part.</p> <p>3 Q. (Mr. Riggs continued.) I won't ask you about it</p> <p>4 then.</p> <p>5 When did Peterson first -- maybe I'm not even saying</p> <p>6 it correctly. Let me ask another question.</p> <p>7 Does Peterson presently require its growers to have</p> <p>8 animal Waste management plans or nutrient management</p> <p>9 plans?</p> <p>10 A. Yes, we do.</p> <p>11 Q. When did that first occur?</p> <p>12 MR. McDANIEL: That's been asked and</p> <p>13 answered by Mr. Wear, but --</p> <p>14 Q. (Mr. Riggs continued.) Do you know?</p> <p>15 MR. McDANIEL: -- you can answer, if you</p> <p>16 know.</p> <p>17 A. I'm not -- I'll not really sure, David, what the</p> <p>18 exact years.</p> <p>19 Q. (Mr. Riggs continued.) Was it a different time for</p> <p>20 contract growers for Peterson in Arkansas versus Oklahoma?</p> <p>21 A. It's possible. I don't know for sure.</p> <p>22 Q. Does every contract today that Peterson has with its</p> <p>23 growers require the grower to have an animal waste</p> <p>24 management plan?</p> <p>25 MR. McDANIEL: Or equivalent?</p>
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<p>1 witness in a deposition that you haven't produced as part</p> <p>2 of your initial disclosures or otherwise. Okay. Thank</p> <p>3 you. Go ahead.</p> <p>4 Q. (Mr. Riggs continued.) Mr. Houtchens, are you</p> <p>5 familiar with something called the National Poultry Waste</p> <p>6 Management Symposium?</p> <p>7 A. No, I'm not.</p> <p>8 Q. Well, I'll try this anyway. Let me hand you a copy</p> <p>9 of an exhibit that's numbered 14. These are the opening</p> <p>10 remarks, welcoming comments of the National Poultry Waste</p> <p>11 Management Symposium for the years 1988, '90, '92, '94,</p> <p>12 '96, '98, 2000, 2002, and 2004.</p> <p>13 (Wherein, Plaintiff's Exhibit 14 was marked.)</p> <p>14 Do you know if Peterson Farms attended any of these</p> <p>15 national symposiums on poultry waste management?</p> <p>16 A. No, I do not.</p> <p>17 Q. Was Peterson aware that these meetings were held</p> <p>18 every two years with locations around the country to deal</p> <p>19 with issues involving poultry waste management?</p> <p>20 MR. McDANIEL: Object to the form.</p> <p>21 A. No, I do not.</p> <p>22 Q. (Mr. Riggs continued.) Would you say that Peterson</p> <p>23 is -- is a major player in the poultry industry in this</p> <p>24 country?</p> <p>25 MR. McDANIEL: Object to the form.</p>	<p>1 Q. (Mr. Riggs continued.) Or a nutrient waste</p> <p>2 management plan, whatever it's called.</p> <p>3 A. Required that they at least have one or at least be</p> <p>4 signed up in the process.</p> <p>5 Q. What actions can Peterson take when a grower -- if a</p> <p>6 grower does not comply with his animal waste management</p> <p>7 plan?</p> <p>8 A. There's several actions you could take. I would say</p> <p>9 the first one being a confrontation with that contract</p> <p>10 grower.</p> <p>11 Q. Do you know --</p> <p>12 A. Ask them to get it corrected, and then go from</p> <p>13 there. You know, it just depends on that first meeting.</p> <p>14 Q. Other than that kind of meeting you just discussed,</p> <p>15 has Peterson taken any action against a grower who has not</p> <p>16 stayed in compliance with his animal waste management</p> <p>17 plan?</p> <p>18 A. Yes, I believe we have. One grower in particular.</p> <p>19 Q. Can you tell me about that?</p> <p>20 A. Yes. We've got a broiler contract grower in</p> <p>21 Arkansas in the Spavinaw Eucha that had -- had a pile</p> <p>22 de-cake litter outside, and we approached him about that.</p> <p>23 And we didn't get it resolved. He didn't get it resolved.</p> <p>24 But he's no longer growing chickens for us.</p> <p>25 Q. Is that because you chose to discontinue contracting</p>

30 (Pages 114 to 117)

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<p>1 with him?</p> <p>2 A. Actually, he was supposed to call us when he got the</p> <p>3 situation taken care of, and we left that -- the ball in</p> <p>4 his court.</p> <p>5 Q. He never called, as far as you know?</p> <p>6 A. That's correct.</p> <p>7 Q. Do you remember his name?</p> <p>8 A. Rollin Pool, P-O-O-L.</p> <p>9 Q. Okay. And he's in the Eucha Spavinaw Watershed?</p> <p>10 A. Yes.</p> <p>11 Q. Has Peterson ever taken any action against any</p> <p>12 grower in the Illinois River Watershed who's not stayed in</p> <p>13 compliance with his animal waste management plan?</p> <p>14 A. We may have. I don't know of any particular</p> <p>15 situations right now today.</p> <p>16 Q. Let me hand you another exhibit.</p> <p>17 (Wherein, an off-the-record discussion was held.)</p> <p>18 This is Exhibit 15. Mr. Houtchens, it's two pages.</p> <p>19 Would you take a moment to look at those?</p> <p>20 (Wherein, Plaintiff's Exhibit 15 was marked.)</p> <p>21 MR. ELROD: Is this 14 or 15?</p> <p>22 MR. GARREN: We've marked 13. It hasn't</p> <p>23 been introduced yet. So we're on 15.</p> <p>24 MR. RIGGS: This is 15.</p> <p>25 MR. ELROD: Oh, that's 14?</p>	<p>1 personally seen this myself so...</p> <p>2 Q. (Mr. Riggs continued.) Okay.</p> <p>3 A. I wouldn't be really answering correctly if I said</p> <p>4 no, we've not seen it or heard of it because I know we've</p> <p>5 seen them from Arkansas before.</p> <p>6 Q. Let's look at the second page of Exhibit 16.</p> <p>7 MR. ELROD: Have you got more of these,</p> <p>8 David?</p> <p>9 MR. GARREN: No.</p> <p>10 MR. RIGGS: No, but...</p> <p>11 MR. ELROD: That's all right.</p> <p>12 Q. (Mr. Riggs continued.) Well, this document -- or</p> <p>13 this memorandum was dated April 24th, 2004. How long was</p> <p>14 that after the law was passed in Oklahoma requiring</p> <p>15 growers to have animal waste management plans?</p> <p>16 A. Oh, just a couple of years.</p> <p>17 Q. Was the law passed in '98 in Oklahoma?</p> <p>18 A. No. I wasn't -- it's hard to say for sure when that</p> <p>19 was exactly passed in Oklahoma versus Arkansas, but just</p> <p>20 recently in Arkansas.</p> <p>21 Q. The second page says, "Oklahoma PFO." Is that</p> <p>22 poultry farm operator? Do you know what that means?</p> <p>23 A. I would only be speculating what the acronym's for.</p> <p>24 Q. Okay. "Without An AWWP." Do you know what that</p> <p>25 means?</p>
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<p>1 Q. (Mr. Riggs continued.) This appears to be a memo</p> <p>2 dated April 12, 2004, from D.J. Parrish with the Oklahoma</p> <p>3 Department of Agriculture Water Quality Service --</p> <p>4 Services. Simply says, "Dear" -- or it just simply says</p> <p>5 Poultry Integrator. Do you recall having seen this</p> <p>6 document before?</p> <p>7 A. No. I -- I don't recall seeing this memo.</p> <p>8 Q. Would you know if Peterson received a copy of it?</p> <p>9 A. No, I would not know without -- for a fact that we</p> <p>10 have received a copy of it.</p> <p>11 Q. The memo references 25 percent of all poultry</p> <p>12 operations have not submitted a copy their Animal Waste</p> <p>13 Management Plan to the Oklahoma Department of Agriculture</p> <p>14 Is this the first time you've ever heard of that?</p> <p>15 MR. McDANIEL: Object to the form.</p> <p>16 Q. (Mr. Riggs continued.) Is this the first time you</p> <p>17 --</p> <p>18 A. It's the first time I have, yes.</p> <p>19 Q. Have you ever heard that the Oklahoma Department of</p> <p>20 Agriculture notified integrators as the growers who did</p> <p>21 not have animal waste management?</p> <p>22 MR. McDANIEL: Object to the form. It</p> <p>23 mischaracterizes this note.</p> <p>24 A. I know we have worked with both the Arkansas and</p> <p>25 Oklahoma NRSES people to find out, so I just haven't</p>	<p>1 A. I would assume that is an animal waste management.</p> <p>2 Q. All right. Do you recognize any of these names on</p> <p>3 this list?</p> <p>4 A. Yes.</p> <p>5 Q. Are these Peterson growers? It says they are to the</p> <p>6 right, but I'm just wanting to know if you recognize them</p> <p>7 as Peterson growers.</p> <p>8 A. Well, not all of them are, because I don't believe</p> <p>9 Leslie Reed down at Prairie Grove was one.</p> <p>10 Q. This is a 2004 --</p> <p>11 A. James Millsap does not ring -- well, I -- I realize</p> <p>12 that.</p> <p>13 Q. Yeah. Okay.</p> <p>14 A. There's a couple on there I don't believe are ours,</p> <p>15 but if there are growers on here, they're Peterson Farms'</p> <p>16 growers.</p> <p>17 Q. Do you know if at that time the company was aware</p> <p>18 before receiving this notice from the Oklahoma Department</p> <p>19 of Agriculture that it had some 20 growers without a plan</p> <p>20 on file?</p> <p>21 A. I do not know if we were aware or not.</p> <p>22 Q. Do you know if any action was taken by the company</p> <p>23 in response to this notice?</p> <p>24 A. I do not know for sure on this notice. I know we</p> <p>25 have contacted growers and told them they've got to get</p>

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1 with their -- their plan writers and get -- get it on the  
 2 record, get it started.  
 3 Q. Do you know --  
 4 A. Get it in process.  
 5 Q. I'm sorry. Do you know if any of these growers were  
 6 denied chickens to raise by Peterson, as a result of their  
 7 failure to have an animal waste management plan?  
 8 MR. McDANIEL: Object to the form.  
 9 A. No, I don't know that.  
 10 Q. (Mr. Riggs continued.) Do you know how many  
 11 Peterson Farm growers -- contract growers today do not  
 12 have animal waste management plans on file?  
 13 MR. McDANIEL: Object to the form.  
 14 A. I do not.  
 15 Q. (Mr. Riggs continued.) Have you ever checked any  
 16 records to try to find out?  
 17 A. I have not.  
 18 Q. You're speaking for the company when you say that?  
 19 A. Yes.  
 20 Q. All right. Does the company know how to check to  
 21 find out if its growers have animal waste management plans  
 22 on file?  
 23 A. Are you saying file in our physical files, or are  
 24 you saying --  
 25 Q. No.

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1 A. -- file with the --  
 2 Q. I'm sorry.  
 3 A. Okay. That's probably why I misunderstood you.  
 4 Q. Well, I can ask it both ways. I'd like to know both  
 5 answers.  
 6 Does Peterson maintain files for all of its growers  
 7 for their animal waste management plans?  
 8 A. I know we -- we ask or require that in our contract,  
 9 and mostly that is so that the growers understand that,  
 10 you know, we can terminate their contract if they don't  
 11 get an animal waste management plan or a nutrient  
 12 management plan.  
 13 Q. So --  
 14 A. So we may have some without physically in their  
 15 grower file, but --  
 16 Q. You don't know?  
 17 A. -- mostly rely on --  
 18 Q. I'm sorry.  
 19 A. We mostly rely on it that it's with the appropriate  
 20 nutrient management plan for that state.  
 21 Q. Okay. So you're saying Peterson maintains some  
 22 files for its growers' animal waste management plans, but  
 23 you don't rely on your files to know whether or not  
 24 everybody's in compliance?  
 25 A. Correct.

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1 Q. You rely on the state agency's records for that?  
 2 A. We rely on the state agencies to contact us if there  
 3 is anybody that's not in compliance or not having those  
 4 records.  
 5 Q. You have a tech person, technician going out to  
 6 every grower's property how often?  
 7 A. When they have birds in their houses, we hope --  
 8 we're shooting for about once a week.  
 9 Q. Once a week?  
 10 A. Sometimes more, sometimes less.  
 11 Q. How much trouble would it be for that person to  
 12 inquire about seeing the waste management plan?  
 13 A. We've -- they've got a lot of stuff to do. I guess  
 14 it would be trouble to have them do that on every farm.  
 15 Q. Even once a -- a year?  
 16 A. I'm sure they can do it once a year.  
 17 Q. How much interest does Peterson have in knowing  
 18 whether or not its growers have actually in place an  
 19 animal waste management plan?  
 20 MR. McDANIEL: Object to the form.  
 21 A. I would say we were interested.  
 22 Q. (Mr. Riggs continued.) But not interested enough to  
 23 ask, huh?  
 24 MR. McDANIEL: Object to the form. It's  
 25 argumentative.

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1 A. I didn't say we wouldn't ask.  
 2 Q. (Mr. Riggs continued.) Well, does your guy who's  
 3 there weekly ever ask?  
 4 A. They do if they're instructed to.  
 5 Q. Do you ever ask?  
 6 A. We have.  
 7 Q. You?  
 8 A. I haven't recently -- personally or the company.  
 9 Q. Does anybody else in the company besides the tech  
 10 ever ask them?  
 11 A. I'm not aware of it.  
 12 Q. Let me hand you Exhibit No. 16.  
 13 (Wherein, Plaintiff's Exhibit 16 was marked.)  
 14 This document has several pages, as you can see. It  
 15 says on the first page, Arkansas Water Resources Center,  
 16 April 6th and 7th, 1993 Research Conference, Focus on  
 17 Phosphorus.  
 18 Have you ever seen this document before?  
 19 A. No, I haven't.  
 20 Q. Did you happen to attend this 1993 conference called  
 21 Focus on Phosphorus?  
 22 A. No, I did not.  
 23 Q. Do you know if anyone from the company attended?  
 24 A. No, I do not.  
 25 Q. Do you know what the Arkansas Water Resources Center

32 (Pages 122 to 125)

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<p>1 is?</p> <p>2 A. I do not.</p> <p>3 Q. On page 3, at the top it says Schedule of</p> <p>4 Activities. The first after the Welcome is something</p> <p>5 called Workshop, Phosphorus Management for Agriculture and</p> <p>6 Water Quality by Andrew Sharply, USDA.</p> <p>7 Have you ever heard of Dr. Andrew Sharply?</p> <p>8 A. No, I haven't.</p> <p>9 Q. So you wouldn't know whether he's a reliable</p> <p>10 authority on the topic of this workshop Phosphorus</p> <p>11 Management For Agriculture and Water Quality?</p> <p>12 A. No, I wouldn't.</p> <p>13 Q. Do you speak for the company when you're saying</p> <p>14 that, that the company doesn't know of Andrew Sharpley?</p> <p>15 MR. McDANIEL: The company isn't here to</p> <p>16 take the position on the credibility of any scientist.</p> <p>17 They weren't asked to, nor did they prepare a witness to</p> <p>18 do that.</p> <p>19 Q. (Mr. Riggs continued.) My question is, do you know</p> <p>20 -- does the company know who Andrew Sharpley is?</p> <p>21 MR. McDANIEL: The company's not here to</p> <p>22 take a position on that.</p> <p>23 A. As far as I'm aware of, the company does not know.</p> <p>24 Q. (Mr. Riggs continued.) Yeah. I'm trying to inquire</p> <p>25 about the company's knowledge about these issues which was</p>	<p>1 asking questions unfairly. You're arguing and essentially</p> <p>2 harassing the witness trying to ask him to answer</p> <p>3 questions that are not specified. You show me on your</p> <p>4 notice where he is to come prepared to talk about some</p> <p>5 1993 study that bears no recognizable Bates stamp, don't</p> <p>6 even know where it's been produced, and then ask him if</p> <p>7 Peterson Farms has an opinion about the credibility of a</p> <p>8 particular scientist. You know it's improper, and I'll</p> <p>9 make my record.</p> <p>10 MR. RIGGS: It's not improper. It's about a</p> <p>11 very prominent Arkansas Water Resources Center conference</p> <p>12 and this is an industry that, obviously, ought to be</p> <p>13 concerned, of interest in these matters, and they should</p> <p>14 have some knowledge of these things, and that's what we're</p> <p>15 here to find out, if the company cares enough to know</p> <p>16 anything about what's going on in the field.</p> <p>17 MR. McDANIEL: Well, that's all argument.</p> <p>18 It's interesting. I move to have it stricken.</p> <p>19 MR. RIGGS: Well --</p> <p>20 MR. McDANIEL: I told you the company is not</p> <p>21 going to answer that question because you didn't --</p> <p>22 MR. RIGGS: Are you --</p> <p>23 MR. McDANIEL: -- properly request on the --</p> <p>24 MR. RIGGS: -- telling him not to answer a</p> <p>25 any questions about the Arkansas Water Resources Center</p>
Page 127	Page 129
<p>1 expressly put in the directions to you to be prepared.</p> <p>2 MR. McDANIEL: No.</p> <p>3 Q. (Mr. Riggs continued.) Do you understand that?</p> <p>4 MR. McDANIEL: No, don't -- and don't argue</p> <p>5 with the witness about that.</p> <p>6 MR. RIGGS: I'm making a statement and</p> <p>7 asking him if he understands that.</p> <p>8 MR. McDANIEL: It's a misleading statement.</p> <p>9 There isn't anything --</p> <p>10 MR. RIGGS: Make your objection for the</p> <p>11 record.</p> <p>12 MR. McDANIEL: I will if you'll.</p> <p>13 MR. RIGGS: Yeah, you're --</p> <p>14 MR. McDANIEL: -- hang on to it a minute.</p> <p>15 MR. RIGGS: But you're going to coach the</p> <p>16 witness, and you know you're not do that.</p> <p>17 MR. McDANIEL: I'm not coaching. I'm --</p> <p>18 MR. RIGGS: That's exactly what you're</p> <p>19 doing.</p> <p>20 MR. McDANIEL: -- having a problem with the</p> <p>21 fact --</p> <p>22 MR. RIGGS: You're telling him, "Don't</p> <p>23 answer the question, and here's why." You just need to</p> <p>24 make your records.</p> <p>25 MR. McDANIEL: All right, David. You're</p>	<p>1 Conference Focus on Phosphorus?</p> <p>2 A. Yes.</p> <p>3 MR. McDANIEL: David, was this document</p> <p>4 produced by the plaintiffs in this litigation?</p> <p>5 MR. RIGGS: I don't know.</p> <p>6 MR. McDANIEL: Because I don't recognize it.</p> <p>7 MR. RIGGS: I do not know the answer to</p> <p>8 that.</p> <p>9 MR. McDANIEL: It's not even consistently</p> <p>10 Bates stamped throughout. Some are, some aren't.</p> <p>11 MR. RIGGS: I do not know the answer.</p> <p>12 MR. McDANIEL: Okay.</p> <p>13 (Wherein, an off-the-record discussion was held.)</p> <p>14 Q. (Mr. Riggs continued.) Does poultry waste -- and</p> <p>15 I'm using that term as it's used in the Water Quality</p> <p>16 Handbook Peterson Farms provided its growers, does poultry</p> <p>17 waste from Peterson Farms chickens, which has been spread</p> <p>18 on land within the Illinois River Watershed, contain</p> <p>19 phosphorus?</p> <p>20 MR. McDANIEL: Object to the form.</p> <p>21 A. It should contain phosphates.</p> <p>22 Q. (Mr. Riggs continued.) Okay. Again, using the term</p> <p>23 poultry waste as it's used in the Water Quality Handbook</p> <p>24 Peterson provided its growers and using the term runoff as</p> <p>25 it's also used in the Water Quality Handbook Peterson</p>



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1 provided its growers, has poultry waste from Peterson's  
2 chickens which has been spread on land within in the  
3 Illinois River Watershed run off from land on which it's  
4 been spread?

5 MR. McDANIEL: Object to the form.

6 A. I don't know that.

7 Q. (Mr. Riggs continued.) To your knowledge, have any  
8 hazardous substances within the meaning of CERCLA which is  
9 contained in poultry waste in houses where Peterson  
10 chickens are grown and which has been spread on land  
11 within the Illinois River Watershed run off on the land on  
12 where it's been spread?

13 MR. McDANIEL: Object to the form.

14 A. Not that I'm aware of.

15 Q. (Mr. Riggs continued.) Have any pathogens, as that  
16 term is used in the Water Quality Handbook provided to  
17 Peterson's growers by the company, contained in poultry  
18 waste from houses where Peterson chickens are grown and  
19 spread on land within the Illinois River Watershed run off  
20 in the land upon which the waste has been spread?

21 MR. McDANIEL: Object to the form.

22 A. Not that I'm aware of.

23 Q. (Mr. Riggs continued.) Has phosphorus -- as that  
24 term is used in the Water Quality Handbook, which is  
25 contained in poultry waste from houses where Peterson

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1 broiler growers still be expected to comply with those  
2 requirements?

3 MR. McDANIEL: Object to the form.

4 A. Well, they're just a broiler -- it's a guideline  
5 book. A lot of these are recommendations, guidelines, so  
6 in that case, they would -- I'm not certain without  
7 reading this carefully whether it's just recommendations  
8 and not requirements, as you referred to it.

9 Q. (Mr. Riggs continued.) The next page, that's 7.

10 I'm sorry -- yes, the next page under Chick Pre-Placement  
11 Checklist, it has a number of items there with  
12 descriptions of how they are to be handled. It's got  
13 Fans, Waters, Heaters, Feeders, Lights, Litter, Curtains,  
14 Curtain Drops, Backup Thermostats, Breaker Box." Are the  
15 Peterson growers expected to meet those requirements?

16 MR. McDANIEL: Object to the form.

17 A. I believe these are -- these ten items are  
18 recommendations that are, basically, minimum standards  
19 that need to be met before the birds are placed.

20 Q. (Mr. Riggs continued.) What does minimum standards  
21 mean to you?

22 A. What it means to me, minimum standards would be the  
23 bare minimum or the basics.

24 Q. Where do they call these just recommendations?

25 A. I don't know if it is on this particular page for

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1 chickens are grown and which has been spread on land  
2 within the Illinois River Watershed run off from the land  
3 upon which that waste has been spread?

4 MR. McDANIEL: Object to the form.

5 A. Not that I'm aware of.

6 (Wherein, an off-the-record discussion was held.)

7 Q. (Mr. Riggs continued.) I'm going to hand you  
8 Exhibit 18. Do you recognize that to be the Peterson  
9 grower handbook?

10 (Wherein, Plaintiff's Exhibit 18 was marked.)

11 A. Yes, I do.

12 Q. Says it was revised at the bottom. Says June 2nd,  
13 2005. Is that correct, as far as you know?

14 A. Yes, sir.

15 Q. It was sent to them in a letter dated June 17th,  
16 2005. To your knowledge, has it been changed since it was  
17 sent out to the Peterson Farms' broiler producers in June  
18 of 2005?

19 A. No, I do not believe it's been revised.

20 Q. On the fourth page from the top there's the heading  
21 Management Between Flocks. It says, "Clean out, Decaking,  
22 Litter Treatments, Litter Management between Flocks,  
23 Insecticide Application, Health Issues. Since this  
24 handbook has not been revised since this exhibit was  
25 created or put together, this document, would Peterson

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1 the letter C. It's not saying whether it's  
2 recommendations or requirements.

3 Q. It does say they're minimum standards, though. And  
4 you described that to be what? How did you describe it?  
5 What did you say minimum standards means in this?

6 A. In general, I would say the bare minimum, a bare  
7 minimum, or a basis.

8 Q. If a grower failed to comply with these bare  
9 minimums, what would Peterson do about it?

10 A. Well, in this particular part of the document it  
11 says that they could delay placement. We could delay  
12 placement. It doesn't say we will.

13 Q. Has the company ever refused to place chicks with a  
14 grower who failed to meet these minimum standards?

15 A. I don't believe we ever have for these -- for these  
16 ten.

17 (Wherein, an off-the-record discussion was held.)

18 Q. (Mr. Riggs continued.) Does Peterson service  
19 technician inspect the growers' houses before chicks are  
20 placed to determine whether or not the minimum standards  
21 have been met?

22 A. We do recheck the farms before they get birds.

23 Q. Since it says Peterson could choose not to deliver  
24 chicks to someone -- some grower who failed to meet these  
25 minimum -- minimum standards, would that also be true that

34 (Pages 130 to 133)

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<p style="text-align: right;">Page 134</p> <p>1 they could refuse to provide growers chicks if they don't  2 meet all the requirements in the law and government  3 regulations regarding environmental matters?  4 A. We could.  5 Q. Did Peterson recently require all growers to have a  6 stacking shed to store their poultry waste, even once it's  7 removed from the grow house?  8 A. Not all growers. Not in the way you're reading  9 that. I believe that's in '08, David.  10 Q. Okay. I think you're right. So is there now a  11 requirement which will be effective next year that all  12 growers will have a -- what is a stacking -- stacking  13 shed?  14 A. Well, it's a -- we need to over -- we need covered  15 storage for any litter that needs to be stacked.  16 Q. So that requirement will go into --  17 A. De-cake and those things.  18 Q. Right. Next year?  19 A. That's -- that's correct.  20 Q. Does Peterson require all of its growers to have  21 alarm systems?  22 A. Only in internal ventilated houses.  23 Q. Do they require all growers to have a certain kind  24 of generator?  25 A. Yes.</p>	<p style="text-align: right;">Page 136</p> <p>1 in that house from pathogens, so it can harm the -- the  2 birds and the -- the growers profitability if he leaves  3 that bedding in there too long. Or bedding.  4 Q. Could a grower lose his right under the contract to  5 get more chickens to grow if he waited too long to remove  6 the waste from his chicken houses?  7 A. Not that I'm aware of in the contract.  8 Q. Even though he went longer than he should, you would  9 continue to bring chickens to the floor?  10 A. Well, basically, David, they wouldn't be able get  11 the loader in the houses.  12 Q. Okay.  13 A. But, I mean, that's being obvious. That's an  14 obvious fact. You know, I don't believe there's anywhere  15 in our contract that says they will get terminated,  16 they'll lose their contract if they don't clean out their  17 litter.  18 Q. So if they didn't have a suitable storage facility  19 for the waste outside the house, you wouldn't insist that  20 they remove it anyway?  21 A. Well, our storage facilities are not for cleaning  22 out litter, they're for de-cake.  23 Q. Okay. That's where you take the top off of it?  24 A. Uh-huh. We -- we don't have large enough storage to  25 completely clean it out.</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. Peterson growers are expected to remove the poultry  2 waste from their grow houses after certain periods of  3 time, aren't they?  4 MR. McDANIEL: Object to the form.  5 A. We're recommended to -- to clean out annually.  6 Q. (Mr. Riggs continued.) How could -- how long are  7 they allowed to go without removing the poultry waste from  8 the grow house?  9 MR. McDANIEL: Object to the form.  10 A. We don't have any set position on that.  11 Q. (Mr. Riggs continued.) What is their  12 recommendation, as you put it?  13 A. Annually.  14 Q. Annually. What happens if the waste continues to  15 accumulate in the -- in the house beyond a year?  16 A. Well, depends on how tall their concrete footers  17 are, the footers on their houses. So you can't go more  18 than it starts getting above your footings, which I don't  19 have an exact data on that.  20 Q. So most typical houses, how long would -- would that  21 be if beyond a year?  22 A. Two years.  23 Q. So does it harm the chickens for the grower to not  24 clean out at least annually?  25 A. They get more -- they get more challenged built up</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. Okay. When they do a complete clean out, they need  2 to have someplace for it to go to be land applied or for  3 some other use?  4 A. That's correct.  5 Q. You've told me -- or maybe it was Mr. Wear -- that  6 from the time Peterson began its operations using contract  7 growers, that the contract growers have owned the waste or  8 the litter. Right?  9 A. Correct.  10 Q. How did the settlement of the City of Tulsa case  11 affect the growers' contract rights to the litter in their  12 houses?  13 MR. McDANIEL: Object to the form.  14 A. I'm not aware they changed anything to the rights to  15 litter.  16 Q. Haven't many of those contract growers for Peterson  17 in the Eucha Spavinaw Watershed since that settlement been  18 prohibited from using the litter the way they've been  19 using it?  20 MR. McDANIEL: Object to the form.  21 A. I imagine some have.  22 Q. Haven't some been denied spreading it on their  23 pastures in that watershed, been told "You can't spread  24 any more litter on your water" -- "in the water" on your  25 pastures in this watershed"?</p>

35 (Pages 134 to 137)

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<p>1 MR. McDANIEL: Object to the form.</p> <p>2 A. Their nutrient management plan writer came to that</p> <p>3 conclusion, I would assume, that they can't spread</p> <p>4 anymore.</p> <p>5 Q. (Mr. Riggs continued.) Have any Peterson contract</p> <p>6 growers in the Eucha Spavinaw Watershed been compensated</p> <p>7 for not being able to spread their litter the way they had</p> <p>8 been before the settlement of the case?</p> <p>9 MR. McDANIEL: Object to the form.</p> <p>10 A. No, they have not been compensated.</p> <p>11 Q. (Mr. Riggs continued.) Do you know of -- of any of</p> <p>12 them that have had their litter put to some other use</p> <p>13 besides land application by them, where they didn't</p> <p>14 receive any compensation for that?</p> <p>15 A. If you're -- I mean, if I'm understanding your --</p> <p>16 understanding you that they had their poultry litter</p> <p>17 hauled out of the watershed, if that's what you're asking</p> <p>18 --</p> <p>19 Q. Right. That would be an example of them not getting</p> <p>20 to use it the way they might have wanted to?</p> <p>21 A. That's -- that's possible.</p> <p>22 Q. But they haven't been compensated for that. That's</p> <p>23 -- that's what you're saying?</p> <p>24 A. That's what I'm saying. That's possible, yes.</p> <p>25 Q. Have you had any of them quit growing for Peterson</p>	<p>1 needed a plan; it was probably the first notice that the</p> <p>2 company, Peterson Farms, was going to require them to have</p> <p>3 a Nutrient Management Plan.</p> <p>4 Q. The State of Arkansas didn't require them to have</p> <p>5 such plans until several years after this. Am I right?</p> <p>6 A. That's correct.</p> <p>7 Q. Has that just taken effect in the past year, the</p> <p>8 Arkansas law requiring the growers to have those plans?</p> <p>9 A. I believe so.</p> <p>10 Q. Did the growers accept this necessity as expressed</p> <p>11 in this letter by Mr. Henderson to develop these plans?</p> <p>12 A. I can't speak for all the growers. I -- I believe</p> <p>13 they did accept that it was going to be a requirement that</p> <p>14 they had to get these nutrient management plans.</p> <p>15 Q. Let me ask you now to look at the Exhibit No. 25.</p> <p>16 You said you'd seen No. 24. Do you recall seeing this</p> <p>17 letter from Blake Evans to the growers of Peterson in</p> <p>18 October of 2004?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know what was -- what gave rise to that</p> <p>21 letter?</p> <p>22 A. Well, I believe what gave rise to this letter is the</p> <p>23 -- the availability of poultry litter problem for the</p> <p>24 BMPs.</p> <p>25 Q. This letter appears to require Peterson growers to</p>
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<p>1 in that watershed because of that?</p> <p>2 A. Not that I'm aware of any, no.</p> <p>3 (Wherein, an off-the-record discussion was held.)</p> <p>4 Q. Let me hand you what we've marked as Exhibit 24.</p> <p>5 (Wherein, Plaintiff's Exhibit 24 was marked.)</p> <p>6 This appears to be a letter from Dan Henderson in</p> <p>7 1998 to Arkansas Growers. Wait, I think this -- it</p> <p>8 appears to be -- hold that one. I'm going to give you</p> <p>9 another one -- hand you No. 25.</p> <p>10 (Wherein, Plaintiff's Exhibit 25 was marked.)</p> <p>11 I don't know if these two are related or not, so I'm</p> <p>12 going to ask you about that. The letter from Dan</p> <p>13 Henderson to the Arkansas Growers says, "As you are aware</p> <p>14 the issue of poultry litter being spread on land with too</p> <p>15 much phosphorus in the soil is continuing to come to the</p> <p>16 limelight in the State of Arkansas."</p> <p>17 Were you aware that the president of Peterson in</p> <p>18 1998 had made that statement in writing?</p> <p>19 A. I saw this letter in 1998.</p> <p>20 Q. Okay. Did you ever discuss that with Mr. Henderson?</p> <p>21 A. No, I did not.</p> <p>22 Q. Was that the first notice that the Peterson growers</p> <p>23 had that they would be expected to develop a nutrient</p> <p>24 management plan?</p> <p>25 A. I don't think it was the first notice that they</p>	<p>1 complete grower surveys. And the second page of the</p> <p>2 exhibit is this Grower Survey form. Am I right about</p> <p>3 this?</p> <p>4 MR. McDANIEL: I object to the form.</p> <p>5 A. Looks like the first page he's explaining what the</p> <p>6 -- what this is about and asking for -- appreciate their</p> <p>7 help. And then I think the last page is the Grower Survey</p> <p>8 -- second page.</p> <p>9 Q. (Mr. Riggs continued.) To your knowledge, did the</p> <p>10 growers comply with -- with this necessity to complete</p> <p>11 these forms, the Grower Survey forms?</p> <p>12 A. I do not know how many came back as far as this</p> <p>13 poll.</p> <p>14 Q. This was in 2004. We're almost two years down the</p> <p>15 road, year and a half -- no, longer than that. We're more</p> <p>16 than two. Have you tried to determine whether or not</p> <p>17 these Grower Surveys have been sent to the company?</p> <p>18 A. I have not. That may be a question that Mrs.</p> <p>19 Wilkerson can answer.</p> <p>20 Q. Do you know if these Grower Survey forms were sent</p> <p>21 to Peterson growers in the Illinois River Watershed?</p> <p>22 A. I believe they were sent to all of our broiler</p> <p>23 growers and breed growers.</p> <p>24 Q. Do you know, as a result of getting this</p> <p>25 information, this survey asks for, such as "How many</p>

36 (Pages 138 to 141)

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1 poultry houses are on your farm? How many tons are  
2 produced per year on your farm? How many tons of de-cake  
3 are produced, with what frequency?" And so forth. Those  
4 -- that information coming back to the company, do you  
5 know if it's led to any difference in the way litter's  
6 being handled in the Illinois River Watershed since  
7 October of 2004?

8 A. I do not.

9 MR. McDANIEL: Object to the form.

10 A. I do not.

11 Q. (Mr. Riggs continued.) It says -- Mr. Evans, Blake  
12 Evans, says in the first paragraph, "This information will  
13 be used to estimate the total amount of litter that you  
14 may need to have hauled to other locations or used in some  
15 other manner."

16 Was the information used to determine if the  
17 growers' litter needed to be hauled to other locations or  
18 used in some other manner?

19 A. I don't know. I think he's asking, you know, if the  
20 growers need to have litter hauled out of the location.  
21 It says it's used "to estimate the total amount of litter  
22 that you may need to have hauled to other locations," but  
23 I do not know if after these Grower Surveys came in -- you  
24 know, like I said, I feel like this was used for helped  
25 with the BMPs, which we have hauled a lot of litter out.

1 A. Yes.

2 Q. Do you know how much -- what percentage that would  
3 be of the total --

4 A. That's just for Peterson.

5 Q. -- in that watershed?

6 A. Excuse me?

7 Q. That 3,500 tons, do you know what percentage that  
8 would be of the total that's in the watershed?

9 A. No, I don't.

10 Q. Do you have any vague idea?

11 A. No.

12 Q. I was going to ask -- ask you about amounts of these  
13 things.

14 MR. McDANIEL: You already did.

15 MR. RIGGS: And you didn't know it, either,  
16 it appears.

17 Q. (Mr. Riggs continued.) Who in the company would  
18 know about the amount of litter being produced by its  
19 growers, if you don't?

20 A. What I said, that's on the growers, their individual  
21 nutrient management plans would have that information.

22 Q. You don't have any curiosity about what it would  
23 show?

24 MR. McDANIEL: Object to the form.

25 A. I'm saying we don't have the actual numbers without

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1 Q. I'm trying to get through these pretty quickly.

2 This is --

3 (Wherein, an off-the-record discussion was held.)

4 Let me hand you a three-page exhibit which is No. --  
5 page -- 26. Before I ask you questions about Exhibit 26,  
6 you said, I believe, the BMPs have enabled a lot of litter  
7 to be hauled out. I believe you said a lot. Was -- Am I  
8 right about that?

9 (Wherein, Plaintiff's Exhibit 26 was marked.)

10 A. Yes.

11 Q. That's -- that -- that hauling is subsidized, you  
12 told me earlier. Correct?

13 A. Yes.

14 Q. With grant money that's available -- was it from EPA  
15 or U.S. Department of Agriculture or where?

16 A. I'm not for sure exactly where.

17 MR. McDANIEL: Miss -- Ms. -- Ms.

18 Wilkerson's prepared to answer that.

19 MR. RIGGS: All right.

20 Q. (Mr. Riggs continued.) How much has been hauled  
21 out? And I'm speaking of the Illinois River Watershed.

22 A. I don't know totally. I know I saw where through  
23 BMPs, just through BMPs from September of '06 to May of  
24 '07 almost 3,500 tons have been hauled out.

25 Q. Three thousand five hundred?

1 going and finding out from every one of those individual  
2 parties.

3 Q. (Mr. Riggs continued.) Were those things in your  
4 computer?

5 A. No, they weren't.

6 Q. You don't have any other way to determine it?

7 A. No. That's not our litter, so we don't -- we don't  
8 keep track of it that way.

9 Q. Let me ask you about Exhibit 26. First of all, just  
10 in general, have you seen forms such as these?

11 A. Yes, I have.

12 Q. What is that form?

13 A. It's like a soil analysis.

14 Q. Just a report of the results of the soil test?

15 A. I believe so, yes.

16 Q. Done by the extension service of the University of  
17 Arkansas. Right?

18 A. Yes.

19 Q. At the top it says that. Do you recognize the name  
20 Abe Schrock?

21 A. I've seen it before, yes.

22 Q. And do you recognize him as a Peterson grower?

23 A. I believe he used to be one, yes.

24 Q. Is he now?

25 A. I don't believe so.

37 (Pages 142 to 145)



## Deposition of Kirk Houtchens - Taken July 26, 2007

<p style="text-align: right;">Page 146</p> <p>1 Q. Okay. Do you know how to read one of these soil 2 test reports? 3 A. I believe I can figure it out. 4 Q. Would there be somebody in the company that would 5 know better than you how to read them? 6 A. I don't believe so. 7 Q. The way I read it, it shows in the middle box of 8 each of these a number, and then it's got P beside that. 9 Is that a phosphorus number on this test? 10 A. Yes, it is. 11 Q. And on these three it shows phosphorus levels of 12 1,082 on one field, 1,355 on another field, and 1,111 on 13 another field. Do you agree that's what it says? 14 A. Yes. 15 THE VIDEOGRAPHER: Excuse me, Counsel, we 16 have about five minutes. 17 MR. RIGGS: Okay. 18 Q. (Mr. Riggs continued.) Do you know if Mr. Schrock 19 continued to put poultry waste on these three fields after 20 these tests were done? 21 A. No, I do not. 22 Q. Does Peterson have in its files and records soil 23 test reports for its growers, generally? 24 A. I don't -- we do generally, yes. 25 Q. What does Peterson do when it receives evidence of</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Yes. 2 Q. Does Peterson determine the formulas for all the 3 feed and the types of feed which are provided to its 4 contract growers? 5 A. Yes. 6 Q. Where are the feed mills where the Peterson feed is 7 actually produced? 8 A. We have one feed mill -- 9 Q. One feed mill in Decatur? 10 A. -- in Decatur, Arkansas. 11 Q. Do any of the ingredients in the Peterson feed 12 that's provided to its growers come from within the 13 Illinois River Watershed? 14 A. Not that I'm aware of, no. 15 Q. How much feed is fed annually to all of Peterson's 16 chickens, anywhere they're grown? Do you have a number 17 for that? 18 A. No, I don't have an exact number. We -- we 19 manufacture approximately 8,000 tons a week in our 20 feeders. 21 Q. And you only manufacture feed for your own chickens. 22 Correct? 23 A. We do sell some to George's. 24 Q. All right. How much of that 8,000 tons a week? 25 A. No, that'd be -- about 8,000 is about what we</p>
<p style="text-align: right;">Page 147</p> <p>1 soil test levels, such as these? 2 A. Well, I would -- if Peterson Farms received soil 3 test levels like these, we would be hoping that he's 4 taking this out of the watershed. 5 Q. You would just hope it, you wouldn't do anything 6 about it? 7 A. Well, we wouldn't have to go out to the farm and 8 look. We -- we don't enforce the state laws. But as far 9 as a grower that -- if we have evidence or we're contacted 10 that a grower is violating the laws, then we would stop 11 taking birds on that grower. 12 Q. Has Peterson ever stopped supplying chickens to any 13 growers who have continued to spread poultry waste from 14 their grower houses on fields which contained excessive 15 phosphorus levels? 16 MR. McDANIEL: Objection. It's compound. 17 A. Not that I'm aware of. 18 Q. (Mr. Riggs continued.) Let's talk now about 19 something entirely different, the feed formulas and the 20 ingredients in the feed. That is an area you're prepared 21 to talk about? 22 A. Yes. That's correct. 23 Q. First of all, does Peterson provide all of the feed 24 to its contract growers which they use in raising 25 Peterson's chickens?</p>	<p style="text-align: right;">Page 149</p> <p>1 manufacture for our use. 2 Q. So your own use? 3 A. Yeah. 4 Q. Eight thousand tons a week? 5 A. Yes. 6 Q. Has that been fairly constant over the last several 7 years? 8 A. Yeah, pretty much. If we have a cutback, we -- we 9 reduce our broiler placement, it would go down inversely. 10 It would go up if we placed more broilers. 11 Q. Can you tell me how much of this feed is fed to 12 Peterson chickens in the Illinois River Watershed? 13 A. No, I can't today. 14 Q. Could you -- I mean, is there someone in the company 15 that -- that could give us that figure? 16 A. It would be, basically, what we discussed earlier 17 today, those same grower statistics or settlements for the 18 actual growers that were in the -- well, we don't keep our 19 records separate for the different watersheds. 20 Q. Are the records that you do keep computerized 21 records? 22 A. Yes, I believe they are. 23 THE VIDEOGRAPHER: Excuse me, Counsel. We 24 have about one minute. 25 MR. RIGGS: Okay.</p>

38 (Pages 146 to 149)

## Deposition of Kirk Houtchens - Taken July 26, 2007

<p style="text-align: right;">Page 150</p> <p>1 Q. (Mr. Riggs continued.) What would be involved in 2 getting that number, that is, the amount of feed fed to 3 Peterson chickens in the Illinois River Watershed? 4 A. I believe, like we discussed earlier, you'd have to 5 get every one of those feed tickets for this -- actually, 6 it'd be on the settlements. Be a lot easier than to add 7 the individual feed tickets. 8 MR. RIGGS: Let's take a break here. 9 THE VIDEOGRAPHER: The time is 4:44. This 10 is the end of tape 4. We're off the record. 11 (Wherein, a break was taken from 4:44 to 4:47.) 12 THE VIDEOGRAPHER: The time is 4:47. This 13 is the beginning of tape 5. We're on the record. 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 152</p> <p>1 that's fed for most of the life of the broiler, and then 2 there's one that's fed in the last several days, I guess, 3 of the broiler. Correct? 4 A. Well, that's -- 5 Q. And I'm just -- let's cover which two were tests. 6 A. Well, you -- you've got four formulas here. You're 7 showing a grower natural and a starter natural. Those two 8 were tests. 9 Q. All right. 10 A. But the complete broiler formulas would be broiler 11 starter, broiler grower, and broiler finisher. You're 12 missing the broiler starter. 13 Q. Okay. 14 A. That might be -- 15 Q. Okay. Of the two that aren't -- that were not just 16 tests, then we have one called a Basal Grower and the 17 other called a Basal Finisher. 18 A. Correct. 19 Q. Correct? What's the difference between those two? 20 I mean, how are they used differently? 21 MR. McDANIEL: Uh-huh. 22 A. The Basil Finishers are withdraw feed. That's to 23 meet FDA withdrawal specifications or requirements. 24 Q. (Mr. Riggs continued.) And how long is that fed? 25 A. Approximately 15 days, 14 days.</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. (Mr. Riggs continued.) Doctor, I'm handing you 2 Exhibit No. 27 now. I believe you will agree there are 3 four pages there and they each contain feed formulas. 4 Right? 5 (Wherein, Plaintiff's Exhibit 27 was marked.) 6 MR. McDANIEL: All right. And, for the 7 record, this document PFIRWP-063698 through 701 is marked 8 CONFIDENTIAL Attorney's Eyes Only, and, therefore, the 9 reporter needs to designate this part of the transcript as 10 covered by the protective order, as well as -- this 11 particular document -- well, there have been a number of 12 confidential documents subject to the protective order, 13 but this is the first Attorney's Eyes Only document that's 14 been offered thus far. And this is a -- this is a feed 15 formula, and unless other counsel can state why they 16 believe they need a copy of it I'd just as soon not pass 17 it out. 18 MR. ELROD: I don't want a copy. 19 MR. GEORGE: We don't need a copy. 20 MR. McDANIEL: Thank you. You can have it 21 back. 22 Q. (Mr. Riggs continued.) Are all of these feeds on 23 these four formulas fed to Peterson chickens? 24 A. The last two, the natural formulas were just a test. 25 Q. Okay. So the real difference, then, is there's one</p>	<p style="text-align: right;">Page 153</p> <p>1 Q. So from the time the chick is delivered to the 2 grower, that first feed called Basal Grower is fed until 3 15 days before the chicks are removed? 4 A. You're missing the starter feed. 5 Q. Okay. How long is it fed? 6 A. It's approximately 18 days. 7 Q. Okay. Who determines how much phosphorus is 8 contained in any of these feeds? 9 MR. McDANIEL: Object to the form. 10 A. As far as total phosphorus, that'd be the 11 nutritionist. 12 Q. (Mr. Riggs continued.) Has Peterson experimented 13 with different levels of phosphorus in its feeds? 14 A. Not that I'm aware of, no. 15 Q. What kind of phosphorus are we talking about here 16 that's in the feed? It says phosphorus, but can you tell 17 me what kind it is? 18 A. Well, you look on the ingredients, the actual name, 19 it gives you the percent. So the fluorinated phosphate 20 would be .18 percent of the total ration. 21 Q. Right. 22 A. When you go to the bottom, where it says Total, that 23 would be the actual pounds that's provided in a six-ton 24 batch. 12,000 pounds. 25 Q. So with the Basal grower formula we're looking at,</p>

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<p>1 it's got phosphorus -- it's got a number of 51.28.  2 A. That's correct.  3 Q. All right. And what kind of phosphorus is that?  4 A. Which one?  5 Q. The one that's under the total --  6 A. Five one two eight?  7 Q. -- column. Yeah. It says Phos at the top, and it's  8 got 51.28 at the bottom.  9 A. That would just be total phosphorus. It's not a  10 kind, it's just what's available in the diet.  11 Q. Okay. Do you know of any publications which  12 recommend lower amounts of phosphorus in poultry feed in  13 general?  14 MR. McDANIEL: Object to the form.  15 A. You know, there's -- there's different textbooks.  16 Ones like the National Research -- I can't think of the  17 exact words. NRCA or NR -- there's too many acronyms.  18 There's -- there's guidelines but I don't know if it's  19 lower than this or not. So I'm not aware of any.  20 Q. (Mr. Riggs continued.) Can you think of any  21 advantages to feeding your feed with less phosphorus in  22 it?  23 A. Less than the chickens need?  24 Q. Less than this formula has.  25 A. Well, if you can feed less and not have problems</p>	<p>1 grower.  2 Q. But it's definitely not fed in the last 15 days?  3 A. Correct.  4 Q. Are there any metals in Peterson's feeds?  5 A. We could get bolts in the feed once in a while.  6 Q. Not on purpose, though?  7 A. Not on purpose.  8 Q. Do you know of any others?  9 A. Other metals?  10 Q. Metals.  11 A. We use minerals, and in those minerals you might  12 have some copper sulfate.  13 Q. I think it has -- lists copper sulfate, doesn't it?  14 A. Yes.  15 Q. On your list of ingredients.  16 A. Yes.  17 Q. What about zinc? Is there any zinc in it?  18 A. There's a small amount of zinc in the trace mineral  19 ingredients.  20 Q. Okay. Do you know of any other metals that are in  21 the feed?  22 A. I believe that would be it. That would be all.  23 Q. Do you know if any of the arsenic in Peterson's  24 feeds, which are fed to the chickens, pass through the  25 chickens and go out in the excrement or waste after that?</p>
Page 155	Page 157
<p>1 with the phosphorus and calcium ratio in the bone  2 formation, yes, you would. It would be cheaper to use  3 less.  4 Q. Okay. So the disadvantage of the feeding less would  5 be you could cause problems with the skeleton of the  6 chicken in the processing?  7 A. Mostly problems with the skeleton of the chicken.  8 So you'd have pretty major leg problem issues in the  9 field.  10 Q. Okay. Does Peterson feed any of its chickens feed  11 which contains arsenic?  12 MR. McDANIEL: Object to the form.  13 A. We use an additive called roxarsone. It has  14 3-nitro.  15 Q. I -- I was going to ask you, what is 3-nitro 20? Is  16 that roxarsone?  17 A. Yes, sir, it is.  18 Q. And that's fed in the basal grower for what period  19 of time, did you tell me? After the first 18 days and up  20 until the last 15 days. Am I right?  21 A. Well, you don't have a copy of the starter feed. We  22 have -- we could possibly even have it in the starter  23 feed.  24 Q. Okay.  25 A. I mean, 3-nitro is cleared to use for starter and</p>	<p>1 MR. McDANIEL: Object to the form.  2 A. We use, you know, roughly 45 grams of 3-nitro and 45  3 grams of -- of the actual 3-nitro active ingredient in a  4 ton of feed. So by the time that ton of feed gets  5 consumed by the bird, you know, if there is any comes out,  6 it's going to be very, very minute, so we -- we aren't  7 aware of any, no.  8 Q. (Mr. Riggs continued.) You're not aware of any that  9 goes through?  10 A. No. We're not aware of any.  11 Q. Have you done any tests to find out if any of it  12 passes through the chicken and goes out into the excrement  13 and then on to the fields?  14 A. I'm not aware that Peterson Farms has. I -- I know  15 we've had research done, or there's been work done by  16 Alpharma, which manufactures roxarsone.  17 Q. What did they find out?  18 A. It was very, very, very minimal.  19 Q. But some does go out?  20 A. You know, if there is at all, I guess there could be  21 some.  22 Q. What about these other metals that -- that are in  23 the feed formulas? Do any of those pass through the  24 chickens and go out in their waste?  25 A. I'm not aware of any that do.</p>

40 (Pages 154 to 157)

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1 Q. Do you know how much of the phosphorus, which is in  
2 the Peterson Foods, passes through the chickens and goes  
3 out in their waste?  
4 A. No, I do not.  
5 Q. Do you know of any of these ingredients in the  
6 Peterson Feed formulas, any of them, are on CERCLA's list  
7 of hazardous substances?  
8 MR. McDANIEL: Object to the form.  
9 A. I haven't seen that list myself.  
10 Q. (Mr. Riggs continued.) You don't know?  
11 A. Yes.  
12 Q. Are there any hormones in the Peterson feed which is  
13 fed to their chickens?  
14 A. No, there is not.  
15 Q. All right. Did there used to be?  
16 A. No.  
17 Q. There's never been, as far as you know, any hormones  
18 in it?  
19 A. No. There's no FDA approved hormones.  
20 Q. Okay. What about antibiotics? Are any antibiotics  
21 in the Peterson Foods formulas?  
22 A. There can be. Yes.  
23 Q. Explain what you mean by "there can be." Well, is  
24 there some --  
25 A. Well, there again --

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1 Q. -- special occasion for it?  
2 A. Well, there again, it would be if we used an  
3 antibiotic in the feed, it would be FDA regulated and  
4 registered product, and depending on the product that we  
5 use, in this BMD 50 that you see there is an antibiotic.  
6 Q. Is it in --  
7 A. Three pounds per batch.  
8 Q. Okay. Is it fed to most of Peterson's chickens?  
9 A. Yes, it probably is.  
10 Q. Okay. Are there any other antibiotics in the feed  
11 that's fed to Peterson's chickens?  
12 A. No.  
13 Q. There aren't any steroids in the feed -- feed.  
14 Right?  
15 A. No.  
16 Q. Never have been?  
17 A. Never have been.  
18 Q. Does Peterson market a so-called natural chicken for  
19 human consumption?  
20 A. No, we don't.  
21 Q. Now, has Peterson attempted to find out what  
22 effects, if any, the constituents of their feed have on  
23 the environment after passing through the chickens?  
24 MR. McDANIEL: Object to the form.  
25 A. No we haven't.

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1 Q. (Mr. Riggs continued.) Have you done any research  
2 on that?  
3 A. No, we haven't.  
4 Q. Does Peterson have any literature in its possession  
5 dealing with that issue, that you know of?  
6 A. Originated through Peterson Farms? Is that what  
7 you're --  
8 Q. No. Any literature from the field from any  
9 authority that deals with the question of what effects, if  
10 any, do constituents of poultry feed have on the  
11 environment after passing through the chicken?  
12 MR. McDANIEL: Object on -- object to the  
13 form.  
14 A. Not that I'm aware of.  
15 Q. (Mr. Riggs continued.) Do you know if in designing  
16 these feed formulas environmental effects were a  
17 consideration?  
18 A. No, I do not.  
19 Q. Do you know of any specific examples of a Peterson  
20 feed formula being changed because of any environmental  
21 concerns?  
22 A. Not that I know of. I mean, I will throw this out,  
23 we have tried the phytase enzyme.  
24 Q. Yeah.  
25 A. And, you know, I don't know if that was back in the

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1 late '90s, early 2000s. It's a BASF product, but I -- I'm  
2 not sure how that went.  
3 Q. What was the purpose --  
4 A. I believe it had problems.  
5 Q. Sorry.  
6 A. That's okay.  
7 Q. What was the purpose of adding phytase?  
8 A. Phytase allows your -- the enzyme allows the  
9 available phosphorus in the ingredients to be more  
10 digestible to the birds.  
11 Q. So less of it passes through the bird.  
12 A. So less of it's added to the feed.  
13 Q. Oh, I see. So you would reduce the amount of  
14 phosphorus in the feed?  
15 A. Correct.  
16 Q. But what's left in there will have a -- a better  
17 benefit because of the phytase is in there?  
18 A. Yeah. The phytase -- if you've already got your  
19 natural phosphorus in corn, soybean meal, the ingredients,  
20 you would have to add less inorganic phosphorus.  
21 Q. Okay. Do you -- speaking for the company, does the  
22 company -- I'll put it that way. Does company know of any  
23 changes it could make in its feed formulas which would  
24 reduce the environmental risks for the poultry waste  
25 produced by its chickens?

41 (Pages 158 to 161)



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<p>1 MR. McDANIEL: Object to the form.</p> <p>2 A. I know we're looking at a product right now from</p> <p>3 Alltech, which is an enzyme that you can add to the feed</p> <p>4 that helps the bird utilize more nutrients, so you could</p> <p>5 reduce some of the calories and phosphorus in the -- in</p> <p>6 the diet.</p> <p>7 Q. (Mr. Riggs continued.) So that would reduce the</p> <p>8 amount of nutrients going out into the waste. Correct?</p> <p>9 A. Well, it's hard to say. It'd help -- it lets us put</p> <p>10 -- or add less of those nutrients to the diet.</p> <p>11 Q. So how would it help the environment if that</p> <p>12 wouldn't actually reduce the number of nutrients going</p> <p>13 out?</p> <p>14 A. Well, all I'm saying -- I'm not saying it wouldn't</p> <p>15 help it or hurt it. It's more probably an economical type</p> <p>16 deal.</p> <p>17 Q. Okay. More to benefit the company's chicken</p> <p>18 production?</p> <p>19 A. Correct.</p> <p>20 END OF CONFIDENTIAL - ATTORNEY EYES ONLY</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 how much poultry waste has been produced by operations in</p> <p>2 which Peterson birds are being raised in the Illinois</p> <p>3 River Watershed on an annual basis, how would you go about</p> <p>4 determining that?</p> <p>5 MR. McDANIEL: Object to the form. You can</p> <p>6 answer.</p> <p>7 A. Most -- most things that you've showed me here today</p> <p>8 were just estimates. If you really wanted to know, you'd</p> <p>9 have to remove the litter and weigh it. Then you have to</p> <p>10 analyze it to get a moisture content and get what the</p> <p>11 nutrients and constituents are.</p> <p>12 So if you want to know what the total tons are</p> <p>13 produced per year, that's the only way I know of that you</p> <p>14 could do it.</p> <p>15 Q. (Mr. Riggs continued.) Do you know of any reliable</p> <p>16 estimates that have been made about the amount of poultry</p> <p>17 waste produced in the Illinois River Watershed in a year?</p> <p>18 A. You showed me some today. So there are some out</p> <p>19 there.</p> <p>20 Q. There was a quote I read earlier to you from the</p> <p>21 Water Quality Handbook which you provided all of your</p> <p>22 growers back in the 1990s. The quote was that there are</p> <p>23 -- I'm sorry, that animal waste is a potential source of</p> <p>24 some 150 disease-causing organisms and pathogens.</p> <p>25 What has Peterson done since first being put on</p>
Page 163	Page 165
<p>1 Q. If it were really important to you to know the total</p> <p>2 number of chickens produced in the Illinois River</p> <p>3 Watershed annually over a period of time, say for the past</p> <p>4 several years, how would you go about doing that?</p> <p>5 MR. McDANIEL: Excuse me, but haven't we</p> <p>6 covered this like three or four times? What's new about</p> <p>7 that question?</p> <p>8 MR. RIGGS: I'm trying to find a way to get</p> <p>9 this information that's important to the case.</p> <p>10 MR. McDANIEL: Okay. Then that --</p> <p>11 MR. RIGGS: There is a way.</p> <p>12 MR. McDANIEL: That clearly establishes to</p> <p>13 me that it's been asked and answered, so we'll -- Kirk,</p> <p>14 you may answer different. That's enough.</p> <p>15 Q. (Mr. Riggs continued.) Are you going to answer that</p> <p>16 question?</p> <p>17 MR. McDANIEL: I've asked him not to answer</p> <p>18 it again.</p> <p>19 A. Yes.</p> <p>20 MR. McDANIEL: It's like the fourth time.</p> <p>21 MR. RIGGS: Have you direct --</p> <p>22 Q. (Mr. Riggs continued.) Are you not going to answer</p> <p>23 the question?</p> <p>24 A. Yes, I'm not going to answer the question.</p> <p>25 Q. Okay. If it were really important to you to know</p>	<p>1 notice of that to deal with that issue?</p> <p>2 MR. McDANIEL: Object to the form.</p> <p>3 A. I think -- and I'm not looking at that, it just said</p> <p>4 that most of them don't last very long, though, if I</p> <p>5 remember right what I saw. And that's pretty much what I</p> <p>6 know, too, is most -- most bacteria and viruses cannot</p> <p>7 live very long outside a body, so...</p> <p>8 Q. (Mr. Riggs continued.) Has the -- was that it? Did</p> <p>9 you have anything else?</p> <p>10 A. No. I don't think I answered your question yet,</p> <p>11 but...</p> <p>12 Q. Okay. Well, let's move on.</p> <p>13 A. But I'm just saying that what has Peterson's done?</p> <p>14 You know, you don't go out and -- you don't want your kids</p> <p>15 to go out and handle things that don't need to be handled.</p> <p>16 I mean there's no secret. Feces, whether it's human or</p> <p>17 animal, you don't handle the stuff. But doesn't mean it's</p> <p>18 bad. You just have to use common sense.</p> <p>19 Q. Has the company taken any steps to protect people</p> <p>20 against these pathogens which are found in the waste</p> <p>21 produced by their chickens which is spread throughout the</p> <p>22 Illinois River Watershed?</p> <p>23 MR. McDANIEL: Object to the form.</p> <p>24 A. No, we have not.</p> <p>25 Q. (Mr. Riggs continued.) Has the company done any</p>

42 (Pages 162 to 165)

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1 sampling or testing to find out if the bacteria -- or any  
2 kind of pathogens are, in fact, present in the poultry  
3 waste from these chickens?

4 A. No, we have not.

5 Q. Has the company done anything to find out if the  
6 pathogens in chicken waste are getting into the Illinois  
7 River or its tributaries?

8 MR. McDANIEL: Object to the form.

9 A. No, we have not.

10 MR. RIGGS: Let me take a quick break to  
11 talk to Mr. Garren, and we'll --

12 THE VIDEOGRAPHER: The time is 5:07. We're  
13 off the record.

14 (Wherein, a break was taken from 5:07 to 5:14 p.m.)

15 THE VIDEOGRAPHER: The time is 5:14. We're  
16 on the record.

17 MR. RIGGS: I don't have any other questions  
18 of the witness.

19 MR. McDANIEL: All right. I -- I don't have  
20 any questions. I would like to mark my letter of July  
21 18th, which was my statement of objections. Is there --  
22 do you have an exhibit number preference? I know we kind  
23 of skipped some.

24 MR. GARREN: Well, we only skipped 13. We  
25 can go the last one.

## 1 CERTIFICATE

2 STATE OF ARKANSAS )

) ss

3 COUNTY OF WASHINGTON )

4 I, CYNTHIA A. DONALD, Certified Court Reporter,  
a notary public in and for the aforesaid county and state,  
5 do hereby certify that the witness, KIRK HOUTCHENS, was  
duly sworn by me prior to the taking of testimony as to  
6 the truth of the matters attested to and contained  
therein; that the testimony of said witness was taken by  
7 me in machine shorthand and was thereafter reduced to  
typewritten form by me or under my direction and  
8 supervision; that the foregoing transcript is a true and  
accurate record of the testimony given to the best of my  
9 understanding and ability.

10 I FURTHER CERTIFY that I am neither counsel for,  
related to, nor employed by any of the parties to the  
11 action in which this proceeding was taken; and, further,  
that I am not a relative or employee of any attorney or  
12 counsel employed by the parties hereto, nor financially  
interested, or otherwise, in the outcome of this action;  
13 and that I have no contract with the parties, attorneys,  
or persons with an interest in the action that affects  
14 or has a substantial tendency to affect impartiality, that  
requires me to relinquish control of an original  
15 deposition transcript or copies of the transcript before  
it is certified and delivered to the custodial attorney,  
16 or that requires me to provide any service not made  
available to all parties to the action.

17 IN WITNESS WHEREOF, I have hereunto set my hand  
18 and affixed my seal of office this 30th day of July, 2007.

19  
20 CYNTHIA A. DONALD, CCR, RPR, LS #183  
21 NOTARY PUBLIC  
In and for the County of Washington  
22 State of Arkansas  
23 My Commission Expires:  
November 5, 2009  
24  
25

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1 MR. McDANIEL: 28?

2 MR. GARREN: 28.

3 (Wherein, Plaintiff's Exhibit 28 was marked.)

4 MR. McDANIEL: Okay. Thank you. All right,  
5 then, the witness will read and sign, directed to me.  
6 Thank you.

7 THE VIDEOGRAPHER: The time is 5:15. We're  
8 off the record.

9 MR. RIGGS: We have been informed by counsel  
10 for Peterson that they are going to leave at 5:30 today  
11 and that the other areas of inquiry we wanted to make were  
12 to be handled by a corporate representative, Janet  
13 Wilkerson, and because we only have about 15 or so minutes  
14 left until 5:30, we're not going to start the deposition  
15 today, but we would ask that she be made available at a  
16 later date, if we depose her on those subject areas in our  
17 notice.

18 MR. McDANIEL: And for Peterson Farms, we  
19 did offer to stay until 5:30, and we are going to depart,  
20 and we're not waiving any objections under the Rules to  
21 resuming the deposition. Thank you.

22 (Wherein, the deposition ended at 5:19 p.m.)  
23  
24  
25

43 (Pages 166 to 168)